



TOWN COUNCIL
Public Hearing, Special Meeting,
Work Session & Executive Session
September 3, 2020
Cape Charles Civic Center
6:30 PM

1. Call to Order
 - A. Roll Call
 - B. Establish quorum
2. Moment of Silence and Pledge of Allegiance
3. Public Hearing:
 - A. [Amendment to Ordinance Creating the Joint Industrial Development Authority of Northampton County and Towns – Name change to Joint Economic Development Authority and adding the towns of Eastville and Nassawadox as participants in the authority](#)
4. Close Public Hearing
5. Presentations
 - A. Northampton County Supervisor John Coker – November Tax Referendum
6. Public Comments on Agenda Items Only (3 minutes per speaker)
7. Special Meeting Order of Business:
 - *A. [Amendment to Ordinance Creating the Joint Industrial Development Authority of Northampton County and Towns](#)
 - *B. [Atlantic Union Bank Line of Credit Renewal](#)
 - *C. [Approval of Public-Private Education Facilities and Infrastructure Act Guidelines](#)
 - *D. [Oyster Farm Directional Sign at Fig Street and Randolph Avenue](#)
8. Town Manager Comments
9. Mayor & Council Comments (5 minutes per speaker)
10. Work Session Order of Business:
 - A. Capital Improvement Plan
11. Recess to Closed Session

Code of Virginia § 2.2-3711-A, Paragraph 7: Consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the public body.

Specifically: Update on Legal Matter – Fauber v. Town of Cape Charles

Code of Virginia § 2.2-3711-A, Paragraph 7:

Specifically: Update on Legal Matter – Kevcor Contracting Corporation v. Town of Cape Charles

Code of Virginia § 2.2-3711-A, Paragraph 1: Discussion, consideration, or interviews of prospective candidates for employment; assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public officers, appointees, or employees of any public body; and evaluation of performance of departments or schools of public institutions of higher education where such evaluation will necessarily involve discussion of the performance of specific individuals.

Specifically: Six-Month Evaluation of Town Manager

12. Return to Open Session

Certification to the best of each member's knowledge (i) only public business matters lawfully exempted from open meeting requirements under this chapter and (ii) only such public business matters as were identified in the motion by which the closed meeting was convened were heard, discussed or considered in the meeting by the public body. Roll call vote.

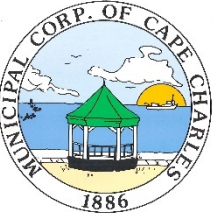
13. Adjournment

**Town of Cape Charles
Notice of Public Hearing**

The Cape Charles Town Council will hold a Public Hearing on Thursday, September 3, 2020, at 6:30 p.m. at the Cape Charles Civic Center, 500 Tazewell Avenue, Cape Charles VA to receive comment regarding amendments to the Ordinance creating the Joint Industrial Development Authority of Northampton County and Towns which was originally adopted in February 2000. The proposed amendments will change the name of the authority to the Economic Development Authority of Northampton County and Towns, and add the Towns of Eastville and Nassawadox as participants in the authority.

The proposed ordinance is available for public view online at www.capecharles.org, under Agendas and Minutes/Town Council, and in the Clerk's office at 2 Plum Street during regular business hours. Please contact Town Clerk Libby Hume at clerk@capecharles.org or at 757-331-3259, ext. 10, if you have any questions or require additional information. Anyone interested in attending and needing special assistance, please contact the Town at least 48 hours before the hearing.

Libby Hume, Town Clerk

 TOWN OF CAPE CHARLES	AGENDA TITLE: Amendment to Ordinance Creating the Joint Industrial Development Authority of Northampton County and Towns		AGENDA DATE: September 3, 2020
	SUBJECT/PROPOSAL/REQUEST: Adoption of Ordinance amending the Ordinance creating the Joint Industrial Development Authority Northampton County and Towns		ITEM NUMBER: 7A
	ATTACHMENTS: Letter from Northampton County, Ordinance #20200903 for Adoption		FOR COUNCIL: Action (X) Information ()
	STAFF CONTACT (s): Libby Hume, Town Clerk	REVIEWED BY: John Hozey, Town Manager	

BACKGROUND:

In February 2000, Northampton County and the Towns of Cape Charles, Cheriton and Exmore adopted “An Ordinance Creating the Joint Industrial Development Authority of Northampton County and Towns.”

DISCUSSION:

At the August 20, 2020 Town Council Regular Meeting, Messrs. Bill Parr and John Burdiss, representatives from the Joint Industrial Development Authority (JIDA), and Northampton County Administrator Charles Kolakowski provided an update of proposed changes to the JIDA. The name of the JIDA was being changed to the Joint Economic Development Authority, and the Towns of Eastville and Nassawadox have petitioned to participate in the Authority.

Each of the participating towns must adopt the Ordinance in order for the amendments to become effective. Per the Ordinance., each town must also hold a public hearing prior to adoption of the Ordinance. The public hearing for the Cape Charles Town Council was held earlier this evening.

RECOMMENDATION:

Staff recommends Council hear public comments followed by adoption of the Ordinance to Amend an Ordinance Entitled, “An Ordinance Creating the Joint Industrial Development Authority of Northampton County and Towns.”



Board of Supervisors of Northampton County
P.O. Box 66 • Eastville, Virginia 23347

Charles Kolakowski
County Administrator

PHONE: 757-678-0440
FAX: 757-678-0483

BOARD OF SUPERVISORS
Oliver H. Bennett, Chairman
L. Dixon Leatherbury, Vice Chairman
John R. Coker
David W. Fauber
M.E. "Betsy" Mapp

August 12, 2020

Mr. John Hozey, Town Manager
Town of Cape Charles
2 Plum Street
Cape Charles, VA 23310

Dear John:

At its meeting of August 11, 2020, the Northampton County Board of Supervisors adopted the enclosed amendment to the ordinance which established the Joint Industrial Development Authority of Northampton County and Towns. As you can see, each of the participating towns must also adopt the ordinance in order for the amendments to become effective. The name of the Authority was changed as well as participation by the Towns of Eastville and Nassawadox which heretofore have declined to join. Please provide this office with a copy of the signed ordinance once the Town has adopted same.

If you have any questions, please advise.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Charles Kolakowski".

CHARLES KOLAKOWSKI
County Administrator

Enclosure

TOWN OF CAPE CHARLES ORDINANCE 20200903

**AN ORDINANCE TO AMEND AN ORDINANCE ENTITLED,
"AN ORDINANCE CREATING THE JOINT INDUSTRIAL DEVELOPMENT
AUTHORITY OF NORTHAMPTON COUNTY AND TOWNS"**

WHEREAS, the County of Northampton and the Towns of Cape Charles, Cheriton and Exmore adopted "AN ORDINANCE CREATING THE JOINT INDUSTRIAL DEVELOPMENT AUTHORITY OF NORTHAMPTON COUNTY AND TOWNS" in February 2000; and

WHEREAS, the Towns of Eastville and Nassawadox have petitioned to participate in the joint industrial development authority so created; and

WHEREAS, the parties hereto desire to amend the February 2000 ordinance as shown below.

NOW, THEREFORE, BE IT RESOLVED that the ordinance entitled, "AN ORDINANCE CREATING THE JOINT INDUSTRIAL DEVELOPMENT AUTHORITY OF NORTHAMPTON COUNTY AND TOWNS", be amended as follows:

WHEREAS, the Industrial Development and Revenue Bond Act (Chapter 49, Title 15.2, Code of Virginia of 1950, as amended and supplemented), hereinafter referred to as the "Act", authorizes the creation of joint industrial development authorities by several municipalities so that such authorities may exercise the powers set out in Section 15.2-4905 of the Act; and

WHEREAS, under and pursuant to the provisions of the Act, the County of Northampton, the Town of Cape Charles, the Town of Cheriton, the Town of Exmore, the Town of Eastville, and the Town of Nassawadox acting by and through their respective Board of Supervisors and Town Councils as the governing bodies thereof, are authorized to create by ordinance a joint industrial development authority as a separate political subdivision of the Commonwealth, with such powers as set forth in the Act; and

WHEREAS, the Board of Supervisors of Northampton County and the Town Councils of the Towns of Cape Charles, Cheriton, Exmore, Eastville and Nassawadox have determined that it is in the best interests of their respective communities to create a joint industrial development authority pursuant to the Act; and

WHEREAS, the Board of Supervisors of Northampton County and the Town Councils of the Towns of Cape Charles, Cheriton, Exmore, Eastville and Nassawadox wish to provide the opportunity for the future participation in a joint industrial development authority, pursuant to the Act, of any or all of the incorporated towns with all or part of their jurisdictions within Northampton County; and

WHEREAS, under and pursuant to the provisions of the Act, the authority hereby created shall be known as the Economic Development Authority of Northampton County and Towns,

hereinafter known as the Authority; and

WHEREAS, by direction of the Board of Supervisors of Northampton County and the Town Councils of Cape Charles, Cheriton, Exmore, Eastville and Nassawadox, this ordinance has been advertised in the Eastern Shore Post a newspaper of general circulation in the County of Northampton and the Towns of Cape Charles, Cheriton, Exmore, Eastville and Nassawadox, according to the requirements of law, and public hearings for Northampton County and the Towns of Cape Charles, Cheriton, Exmore, Eastville and Nassawadox were held on the _____ day of _____, 2020, respectively.

NOW, THEREFORE, BE IT ORDAINED by the Board of Supervisors of Northampton County, the Town Councils of the Towns of Cape Charles, Cheriton, Exmore, Eastville and Nassawadox, Virginia, as follows:

SECTION 1. There is hereby created a separate political subdivision of the Commonwealth of Virginia with such public and corporate powers as are set forth in the Industrial Development and Revenue Bond Act, Chapter 49, Title 15.2, Code of Virginia of 1950 as amended, including such powers as may hereinafter be set forth from time to time in said Act.

SECTION 2. The name of the separate political subdivision of the Commonwealth created by this ordinance shall be the "Economic Development Authority of Northampton County and Towns"

SECTION 3. The Authority shall be governed by a board of seven directors in which all powers of the Authority shall be vested. Said Board of Directors shall be appointed by the Board of Supervisors of Northampton County, the Town Council of Cape Charles, the Town Council of Cheriton, the Town Council of Exmore and the Town Councils of the other participating incorporated towns of Northampton County as follows:

Initially, the Town Council of Cape Charles appointed two (2) directors and the Board of Supervisors of Northampton County appointed five (5) directors as set out below. On the first occasion hereafter upon which the term of office of a Director appointed by Northampton County expires, the Town Council of Cheriton shall have the right to appoint a Director for a four (4) year term. Subsequently, as terms expire, and at such times as this ordinance is amended by the Board of Supervisors of Northampton County and the Town Councils of Cape Charles, Cheriton, and Exmore and adopted by the Town Councils of the Towns of Belle Haven, Eastville, or Nassawadox so that one or more of those Towns has joined the authority, the Town Council of each Town joining the authority pursuant to the provisions of the Act and of this Ordinance, as then amended and adopted by Northampton County, the Towns of Cape Charles, Cheriton and Exmore, and any other incorporated town in Northampton County, shall have the option of appointing one director to the Authority. It is the intention of this provision to create the possibility for each incorporated town with all or part of its jurisdiction within Northampton County to eventually appoint one director to the Authority. As appointments are allocated to towns choosing to participate in the Authority, the County shall relinquish the first three (3) appointments to such towns other than Cape Charles which pursuant to the Act and the provisions of this Ordinance as then amended, join the Authority, the Town of Cape Charles

shall relinquish the fourth appointment to such town, and the County shall relinquish the fifth appointment to such town.

Initial Appointments which were for terms beginning April 1, 1995, were as follows:

- One Year Term - one (1) Northampton County
- One Year Term - one (1) Town of Cape Charles
- Two Year Term - one (1) Northampton County
- Two Year Term - one (1) Town of Cape Charles
- Three Year Term - two (2) Northampton County
- Four Year Term - one (1) Northampton County

Subsequent appointments shall be for terms of four years, except appointments to fill vacancies which shall be for the unexpired terms. Should any Town fail or decline to make an appointment within thirty (30) days of its right to do so, the Board of Supervisors of Northampton County shall make such appointment.

Qualifications for appointments as members of the Board of Directors shall be as set out at Section 15.2-4904 of the Code of Virginia. A member of the Board of Directors, in addition to reimbursement for his or her necessary expenses for travel and otherwise incurred in the performance of official duties, shall be paid \$10.00 for each regular, special or committee meeting attended by the member and for instances in which the member of the Board serves as official representative of the Authority not to exceed \$10.00 per month.

SECTION 4. The County of Northampton, the Towns of Cape Charles, Cheriton, and Exmore, and such other towns as are participating in the Authority as provided in this Ordinance may, from time to time, provide operational funding for the Authority. Such funding shall be at a level agreed to by the Board of Supervisors of Northampton County and the Town Councils of Cape Charles, Cheriton, Exmore and of any other town participating in the Authority pursuant to this Ordinance. Unless otherwise agreed, when and if the governing bodies have reached agreement as to the appropriate level of funding, each participating town shall provide a percentage of the total funding agreed upon which is equal to the percentage of the population of Northampton County which lives in such town based upon the most recent decennial census. Northampton County shall provide the balance of the funding not provided by the Towns of Cape Charles, Cheriton, Exmore and other participating towns according to the foregoing formula. Any net earnings as that term is used at Code of Virginia Section 15.2-4913 shall be distributed according to the foregoing formula.

SECTION 5. Should any portion of this ordinance be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of this ordinance as a whole or any part thereof other than the part so declared to be invalid or unconstitutional.

This amended ordinance was duly considered following the required public hearings held by Northampton County and the Towns of Cape Charles, Cheriton, Exmore, Eastville and Nassawadox on _____, respectively, the members of each of those bodies voting:

	For	Against	Absent
--	-----	---------	--------

Northampton County:

Oliver H. Bennett, Chairman	X		
L. Dixon Leatherbury, Vice Chairman	X		
John R. Coker	X		
Dave Fauber	X		
M. E. "Betsy" Mapp	X		

Town of Cape Charles:

W. S. "Smitty" Dize, Mayor
 Paul E. Grossman
 L. G. "Chris" Bannon
 Tammy G. Holloway
 Steven R. Bennett
 Andy Buchholz
 Andrew C. Follmer

Town of Cheriton

Larry E. LeMond, Mayor
 Matthew Yancy III
 Jacqueline V. Davis
 B.B. "Barry" Downing, Jr
 Robert K. "Bo" Lewis
 Norma P. Spencer
 Jason P. Van Marter

Town of Exmore

Douglas W. Greer, Sr. , Mayor
 G. W. Adkins, III
 T. Bradley Doughty
 Bryon P. Heaster
 Thomas R. Lewis
 John C. "Coby" Metz
 Chase E. Sturgis

Town of Eastville

James C. Sturgis, Mayor
 Denise Waters Bland
 Mary Beth Briggs
 John D. Crockett
 Eleanor C. Gordon
 Anne G. Sayers
 Barbara M. Thomas

Town of Nassawadox

Patricia Stith, Mayor

Andrea Fox

Elizabeth P. "Liz" Freund

John W. Hallett, Sr.

Claude F. Jones

Lisa Lindberg

Drury Stith

This ordinance shall become effective immediately following the full execution of the ordinance by the respective chairman and mayors, and attested by their clerks.

NORTHAMPTON COUNTY BOARD OF SUPERVISORS

By: Oliver H. Bennett
Its Chairman

ATTEST:

[Signature]
County Administrator/Clerk

TOWN OF CAPE CHARLES

By: _____
Its Mayor

ATTEST:

Town Clerk

TOWN OF EXMORE

By: _____
Its Mayor

ATTEST:

Town Clerk

TOWN OF CHERITON

By: _____
Its Mayor

ATTEST:

Town Clerk

TOWN OF EASTVILLE

By: _____
Its Mayor

ATTEST:

Town Clerk

TOWN OF NASSAWADOX

By: _____
Its Mayor

ATTEST:

Town Clerk

 TOWN OF CAPE CHARLES	AGENDA TITLE: Atlantic Union Bank Credit Line		AGENDA DATE: September 3, 2020
	SUBJECT/PROPOSAL/REQUEST: Renew line of credit through Atlantic Union Bank		ITEM NUMBER: 7B
	ATTACHMENTS: Resolution 20200903 Authorizing the Renewal of the Line of Credit with Atlantic Union Bank		FOR COUNCIL: Action (X) Information ()
	STAFF CONTACT (s): Deborah Pocock	REVIEWED BY: John Hozey, Town Manager	

BACKGROUND:

Since 2011, the Town of Cape Charles has maintained a Line of Credit in the amount of \$500,000 for working capital. All disbursements must be approved by the Town Council.

DISCUSSION:

Atlantic Union Bank is in the process of approving the renewal of the Town's line of credit with the following terms and conditions.

1. \$500,000; Unsecured.
2. Renewal fee of \$250.
3. Variable interest rate at prime plus 0.5%, with a floor of 3.75% (no changes).
4. Repayment on monthly basis; maintain a zero balance for a period of no less than 30 consecutive days during each 12 - month period.
5. Annual review by Atlantic Union Bank.
6. No prepayment penalty.

RECOMMENDATION:

Staff recommends adoption of Resolution #20200903 Authorizing the Renewal of the Line of Credit with Atlantic Union Bank in the amount of \$500,000.

RESOLUTION 20200903

**AUTHORIZING THE RENEWAL
OF THE LINE OF CREDIT WITH ATLANTIC UNION BANK**

WHEREAS, the Town of Cape Charles has carried a line of credit with Atlantic Union Bank, formerly known as Union Bank, since 2011; and

WHEREAS, the Town Council of the Town of Cape Charles desires to continue this line of credit; and

WHEREAS, Union Bank has offered the Town of Cape Charles a \$500,000 unsecured line of credit with a variable interest rate of Prime plus 0.5%, with a floor of 3.75%; now

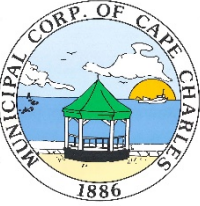
THEREFORE BE IT RESOLVED by the Town Council of the Town of Cape Charles, Virginia, this 3rd day of September 2020, to authorize Mayor Dize to execute the loan documentation to renew the unsecured line of credit for \$500,000 with Atlantic Union Bank. In the event the Mayor is unavailable to sign the documents, both the Vice Mayor and Town Manager would be required to sign. The credit line would be available for use as determined and authorized by the Town Council of the Town of Cape Charles.

Adopted by the Town Council of the Town of Cape Charles on September 3, 2020.

By: _____
Mayor

ATTEST:

Town Clerk

 TOWN OF CAPE CHARLES	AGENDA TITLE: Public-Private Education Facilities and Infrastructure Act (PPEA) Guidelines		AGENDA DATE September 3, 2020
	SUBJECT/PROPOSAL/REQUEST: Approval of Local PPEA/PPTA Guidelines		ITEM NUMBER: 7C
	ATTACHMENTS: PPEA Guidelines		FOR COUNCIL: Action (X) Information ()
	STAFF CONTACT (s): John Hozey, Town Manager	REVIEWED BY: John Hozey, Town Manager	

BACKGROUND:

For most transactions, the Town follows the Virginia Public Procurement Act (VPPA) regarding the process we follow for the expenditure of public funds. But the Commonwealth also provides for alternate procurement processes via the Public-Private Education Facilities and Infrastructure Act (PPEA) and the Public-Private Transportation Act (PPTA). These Acts can provide more process flexibility for some transactions. However, the Acts require all entities to formally adopt local guidelines before they are authorized to access the provisions of these laws.

ITEM SPECIFICS:

These guidelines are quite detailed. Working with our attorney, we have drafted procedures that meet all the requirements of these Acts but attempted to reserve maximum flexibility for the Town. Also included is a summary of abbreviated procedures for unsolicited proposals.

Example: Should the Council wish to formally consider the recently received unsolicited proposal from AQUA Virginia to acquire our water and wastewater utilities, it would be best to do so under the PPEA. While developing the guidelines for the PPEA, our attorney suggested that it would make sense to also establish guidelines for the PPTA (since they are very similar) in the event we ever needed to use that Act.

If approved, these guidelines would not only allow continued due diligence of the AQUA proposal (and any other proposals we might receive on this topic). But since they are general in nature, they would also become just additional tools in our toolbox for potential future procurement needs appropriate to either of these Acts.

RECOMMENDATION:

Staff recommends approval of the attached PPEA/PPTA Guidelines.



**TOWN OF CAPE CHARLES
COMBINED GUIDELINES
FOR THE**

**Public-Private Education Facilities and
Infrastructure Act of 2002, as revised**

and

Public-Private Transportation Act of 1995, as revised

(Adopted ____)

TABLE OF CONTENTS

	PAGE
I. Introduction	4
A. Guideline Overview	4
B. Qualifying Facilities and Projects	5
C. Reservation of Town Rights	6
II. Definitions	6
III. General Provisions	9
A. Proposal Submission.....	9
B. Affected Jurisdictions (PPEA and Affected Local Jurisdictions (PPEA)).....	9
C. Proposal Review Fee.....	9
D. Virginia Freedom of Information Act.....	11
E. Use of Public Funds	13
F. Applicability of Other Laws	13
G. Schedule	13
IV. Solicited Proposals	14
V. Unsolicited Proposals	14
A. Step One: Decision to Accept and Consider an Unsolicited Proposal.....	15
B. Step Two: Decision to Proceed with Conceptual Phase Review Notice	16
C. Step Three: Conceptual Phase Review	18
D. Step Four: The Detailed Review Phase	21
VI. Proposal Evaluation and Selection Criteria	23
A. Qualifications and Experience	23
B. Project Characteristics	23
C. Project Financing	24
D. Project Benefit and Compatibility	24
E. Other Factors.....	25
VII. Interim and Comprehensive Agreements	26
A. Interim Agreement Terms.....	26
B. Comprehensive Agreement Terms	26

C. Comprehensive Agreement Provisions Relating to Construction Projects.....	29
D. Comprehensive Agreement Provisions Relating to Private Entity Legal Structure...	30
E. Notice and Posting Requirements.....	30
F. Audits for Certain Qualifying Transportation Facilities	31
G. Filing of Comprehensive Agreement with Auditor of Public Accounts.....	31

I. Introduction

The Public-Private Transportation Act of 1995 (Va. Code §§ 33.2-1800 et seq.) ("PPTA") and the Public-Private Education Facilities and Infrastructure Act of 2002 (Va. Code §§ 56-575.1, et seq.) ("PPEA"), grant responsible public entities the authority to create public-private partnerships for the development of a wide range of projects for public use if the public entity determines: (i) that there is a need for the facility or project; (ii) that the estimated cost of the facility or project is reasonable in relation to similar facilities or projects; (iii) that the public-private partnership plans will result in the timely development or operation of the project and, in the case of transportation facilities, the more efficient operation of a transportation facility; and, (iv) in the case of transportation facilities, that the proposed development and/or operation of the facility or facilities and the proposed interconnection with existing transportation facilities are reasonable and will address the needs identified in an appropriate state, regional, or local transportation plan by improving safety, reducing congestion, increasing capacity, and/or enhancing economic efficiency.

While substantial private sector involvement is encouraged, qualifying facilities must be devoted primarily to public use. Individually negotiated interim or comprehensive agreements between a private entity and the Town will define the respective rights and obligations of the Town and the private entity.

A. Guideline Overview

The PPTA and PPEA define "responsible public entity" to include any public entity that "has the power to develop or operate the applicable qualifying project." **The Town of Cape Charles (the "Town") is a municipal corporation with the authority to acquire, construct, and operate facilities within the Town's boundaries, and therefore, is a "responsible public entity"** as that term is used in the PPTA and PPEA. The PPEA provides that a responsible public entity shall not proceed to consider any proposal by a private entity for approval of a qualifying project until the responsible public entity has adopted and made publicly available guidelines that are sufficient to enable the responsible public entity to comply with the provisions of the PPEA. Guidelines are also required by the PPTA.

These Guidelines contain the implementation procedures and guidelines developed by the Town to guide the selection of projects as authorized by the PPEA and PPTA. These Guidelines shall apply to all PPEA or PPTA projects and shall be made publicly available. The Town reserves the right to waive or modify these Guidelines on a case-by-case basis, unless such waiver or modification is contrary to, or prohibited by, state law. The Town Manager shall be the person designated as the primary point of contact for information on, or waiver or modification of, these Guidelines, and for submission of solicited or unsolicited proposals under the PPEA or PPTA. As used in these Guidelines, the term "Town Manager" may include any other designee authorized by the Town Council to take action under these Guidelines.

The Guidelines apply to proposals submitted under the authority of the PPTA or PPEA, or both. While the PPTA and PPEA are similar in purpose and intent, prospective proposers should review both statutes closely as there are significant differences between the PPTA and PPEA. It is incumbent upon all proposers to comply with the provisions of the PPTA and PPEA, as the case may be.

In the event the PPEA or PPTA is amended in a manner that conflicts with these Guidelines or concerns material matters not addressed by these Guidelines, the Town shall appropriately amend the Guidelines. If the Guidelines are not amended prior to the effective date of the new law, the Guidelines nonetheless shall be interpreted in a manner to conform to the new law. In the event of a conflict between the Guidelines and the Code of Virginia, the Code shall control.

B. Qualifying Facilities and Projects

Under the PPEA, a "qualifying project" includes:

- (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, including, but not limited to, telecommunications, automated data processing, word processing and management information systems, and related information, equipment, goods and services; and
- (vii) Any improvements necessary or desirable to any unimproved locally- or state-owned real estate.

Under the PPTA, a "qualifying transportation facility" means one or more transportation facilities developed and/or operated by a private entity pursuant to the PPTA. Transportation facilities must be one or a combination of the following: a road, bridge, tunnel, overpass, ferry, airport, mass transit facility, vehicle parking facility, port facility or similar commercial facility used for the transportation of persons or goods, together with any buildings, structures, parking areas, appurtenances and other property needed to operate such facility, not including a commercial or retail use or other enterprise not essential to the transportation of person or goods.

C. Reservation of Town Rights

As set forth in these Guidelines, the Town reserves all rights available to it by law in administering these Guidelines including, without limitation, the right in its sole discretion to:

- (i) Reject any and all proposals at any time, provided that if the Town rejects a proposal that purports to develop specific cost savings, the Town shall specify the basis for the rejection.
- (ii) Terminate consideration or evaluation of any and all proposals at any time;
- (iii) Suspend, discontinue and/or terminate discussions regarding confidentiality agreements, interim agreements and comprehensive agreements at any time prior to the authorized execution of such agreements by all parties;
- (iv) Suspend or eliminate conceptual phase review and proceed directly to detailed phase review;
- (v) Negotiate with a proposer without being bound by any provision in its proposal;
- (vi) Negotiate with fewer than all proposers at any given time;
- (vii) Request and/or receive additional information regarding any proposal;
- (viii) Issue addenda to and/or cancel any RFP or IFB;
- (ix) Revise, supplement or withdraw all or any part of these Guidelines;
- (x) Modify the standard fee schedule contained in these Guidelines;
- (xi) Assess, retain and/or waive any and all fees required to be paid by proposers in accordance with these Guidelines;
- (xii) Request revisions to, or clarification of, conceptual or detailed phase proposals.
- (xiii) Submit a proposal for review by outside consultants or advisors selected by the Town without notice to the proposer. Such consultants or advisors shall be required to maintain the confidentiality or information that has been designated as confidential.

II. Definitions

Definitions are applicable to both PPTA and PPEA unless otherwise specified. Additional definitions may appear in the text of these Guidelines.

"Affected Jurisdiction" means any county, city or town in which all or a portion of a qualifying transportation facility is located and any other responsible public entity directly affected by the qualifying transportation facility. (PPTA)

"Affected Local Jurisdiction" means any county, city or town in which all or a portion of a qualifying project is located. (PPEA)

"Comprehensive Agreement" means the comprehensive agreement between the private entity and the responsible public entity required by § 56-566 of the PPTA and § 56-575.9 of the PPEA.

"Concession" under the PPTA means any lease, license, franchise, easement, or other binding agreement transferring rights for the use or control, in whole or in part, of a qualifying transportation facility by a responsible public entity to a private entity for a definite term, during which the private entity provide transportation-related services, including operations and maintenance, revenue collection, toll-collection enforcement, design, construction, and other activities that enhance throughput, reduce congestion, or otherwise manage the facility, in return for the right to receive all or a portion of the revenues of the qualifying transportation facility.

"Concession payment" means a payment from a private entity to a responsible public entity in connection with the development and/or operation of a qualifying transportation facility pursuant to a concession.

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

"Interim Agreement"

- under the PPTA means an agreement, including a memorandum of understanding or binding preliminary agreement, between the private entity and the responsible public entity that provides for completion of studies and any other activities to advance the development and/or operation of a qualifying transportation facility.
- under the PPEA 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. (PPEA)

"Maintenance" means that term as defined in Va. Code § 33.1-23.02. (PPTA)

"Material Default" means any default by the private entity in performance of its duties under subsection E of § 56-565 (PPTA) or § 56-575.8 (PPEA) that jeopardizes adequate service to the public from a qualifying transportation facility (PPTA) or qualifying project (PPEA). Under the

PPTA the default remains unremedied after the responsible public entity has provided notice to the private entity and a reasonable cure period has elapsed.

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

"Private entity" means any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, non-profit 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 (PPTA and PPEA). Under the PPTA, "public entity" shall not include any public service company. Under the PPEA, "public entity" includes any public body politic and corporate, or any regional entity that serves a public purpose.

"Responsible Public Entity" means a public entity, including local government and regional authorities, that has the power to develop and/or operate the applicable qualifying transportation facility (PPTA) or qualifying project (PPEA).

"Revenues" means all revenues, including but not limited to income, earnings, user fees, lease payments, allocations, federal, state and local appropriations, bond proceeds, equity investments, and/or service payments arising out of or in connection with supporting the development and/or operation of a qualifying transportation facility (PPTA) or qualifying project (PPEA), 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 § 56-561 (PPTA) or § 56-575.5 (PPEA).

"Service Payments" means payments to the private entity in connection with the development and/or operation of a qualifying transportation facility (PPTA) or qualifying project (PPEA) pursuant to a service contract.

"State" means the Commonwealth of Virginia.

"Transportation Facility" means any road, bridge, tunnel, overpass, ferry, airport, mass transit facility, vehicle parking facility, port facility or similar commercial facility used for the transportation of persons or goods, together with any buildings, structures, parking areas, appurtenances, and other property needed to operate such facility. (PPTA)

"User fees" means the rates, tolls (PPTA), fees or other charges imposed by the private entity for the use of all or a portion of a qualifying transportation facility (PPTA) or qualifying project (PPEA) pursuant to the Comprehensive Agreement under § 56-575.9 (PPEA) or pursuant to the Interim or Comprehensive agreement (PPTA).

III. General Provisions

A. Proposal Submission

1. Proposals may be submitted by private entities to the Town either on an unsolicited basis ("Unsolicited Bid/Proposal") or in response to a solicitation for such proposals by the Town ("Solicited Bid/Proposal").
2. The Town Manager may require that any proposal be clarified. Such clarification may include, but shall not be limited to, the submission of additional documentation, responses to specific questions, and interviews with potential project participants.

B. Affected Jurisdictions (PPTA) and Affected Local Jurisdictions PPEA)

1. Any private entity submitting a proposal to the Town must provide any other affected jurisdiction (PPTA) or affected local jurisdiction (PPEA) with a copy of the proposal by certified mail, express delivery, or hand delivery within 5 business days of submission of a proposal to the Town. Any such other jurisdiction shall have 60 days from the date it receives its copy of the proposal to submit written comments to the Town (to the attention of the Town Manager). Such written comments shall indicate whether the proposed project or facility is compatible with the affected local jurisdiction's (i) local comprehensive plan; (ii) local infrastructure development plans; or (iii) capital improvements budget, or other government spending plans. The Town will consider comments received within the 60-day period prior to entering into a Comprehensive Agreement pursuant to the PPEA and PPTA regarding the proposal. No negative inference shall be drawn from the absence of comment by an affected local jurisdiction. However, the Town may begin or continue its evaluation of any such proposal during the 60-day period.
2. Affected jurisdictions submitting comments to the Town under the PPTA shall additionally indicate whether the facility will address the needs identified in the appropriate state, regional, or local transportation plan by improving safety, reducing congestion, increasing capacity, and/or enhancing economic efficiency.

C. Proposal Review Fee

1. The Town shall receive an analysis of the proposal from appropriate internal staff or outside advisors or consultants with relevant experience in determining whether to enter into an agreement with the private entity. The Town is authorized by the PPEA and PPTA to charge a fee to the private entity to cover the costs of processing, reviewing, and evaluating any Unsolicited Proposal or Competing Unsolicited Proposal, including reasonable attorney's fees and fees for financial, technical and other necessary advisors or consultants. Fees charged for such review of a proposal are set forth in Article III.C.3 and are intended to be reasonable in comparison to the level of expertise required to review the proposal and should not be greater than the direct costs associated with evaluating the proposed qualifying

project. "Direct costs" may include (i) the cost of materials, supplies and internal staff time required to process, evaluate, review and respond to the proposal; and (ii) the out-of-pocket costs for attorneys, consultants and financial advisors engaged by the Town in its sole discretion to assist in such review.

2. Proposal fees will not normally be charged for the review of proposals solicited by a Request for Proposal or Invitation for Bid. Any such fee will only be charged if permitted under applicable state and local laws and ordinances.
3. Review fees shall be charged for an Unsolicited Proposal as provided below. Such review fees shall be based on the reasonably anticipated costs of the Town in accordance with the following schedule:
 - (i) **Submission Review Fee:** The Town may charge a submission review fee assessed in an amount adequate to (i) determine whether the proposal is a qualifying project under the PPEA or a qualifying transportation project under the PPTA, (ii) determine whether the proposal meets all other requirements for further consideration under the Acts and these Guidelines, and (iii) assess the merits of the proposal as being in the best interest of the Town. In the event the Unsolicited Proposal is not accepted for further consideration, the Town shall return the fee to the proposer.
 - (ii) **Conceptual Phase Review Fee:** If the Town accepts the Unsolicited Proposal for further consideration, the Conceptual Phase Review Fee shall be a minimum of Five Thousand Dollars (\$5,000) and must be submitted at the time an Initial Submission is accepted for further consideration in the Conceptual Phase. If upon initial review of the Conceptual Phase Proposal to determine its scope and complexity, the Town Manager decides additional resources are needed for proper evaluation, he may request an additional Conceptual Phase Review Fee.
 - (iii) **Detailed Phase Review Fees.** Upon the Town's decision to proceed with a Detailed Phase Proposal, the proposer shall pay an additional review fee calculated at the rate of two and one half percent (2.5%) of the reasonably anticipated total cost of the proposed project, or other amount stipulated by the Town Manager, but not more than \$50,000 at the time of the submittal of the Detailed Phase Proposal. Additional fees may be imposed on and paid by the proposer throughout the processing, review, and evaluation of the unsolicited proposal if and as the Town Manager reasonably anticipates incurring costs in excess of the initial Detailed Phase Review Fee. The Town shall notify the applicant 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 Town will continue the process, review, and evaluation of the proposal.

4. The Town may at its sole discretion at any time before or during the Detailed Phase Review enter into an Interim Agreement with the proposer in accordance with Article VII.A under which the Town may compensate the proposer for Detailed Phase Proposal activities described therein.
5. In the event the total fees paid by the proposer exceed the Town's reasonably estimated total costs incurred in processing, reviewing, and evaluating the proposal, the Town shall reimburse the difference.

D. Virginia Freedom of Information Act

1. General Provisions Relating to Disclosure:

Proposal documents submitted by private entities are generally subject to the Virginia Freedom of Information Act (Va. Code § 2.2-3700 et seq.) ("FOIA"), except as provided by Va. Code §§ 56-575.4(G) (PPEA) and 33.2-1803(H) (PPTA), and the provisions of the FOIA (§ 2.2-3705.6) that exempt certain documents from public disclosure. Proposers are advised to familiarize themselves with the FOIA provisions applicable to these Guidelines. Some FOIA exemptions, however, are discretionary, and the Town 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 (§ 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 Town or private entity would be adversely affected.

At no time shall the Town be liable to a proposer for the disclosure of all or a portion of a proposal submitted under these Guidelines.

2. Protection from Mandatory Disclosure for Certain Documents Submitted by a Private Entity.

Before a document of a private entity may be withheld from disclosure, the private entity must make a written request to the Town at the time the documents are submitted by identifying with specificity the trade secret or other proprietary documents for which protection is being sought and providing a clear statement of the reasons for invoking the protection with reference to one or more of the three classes of records listed in Article III.D.1.

Upon the receipt of a written request for document protection, the Town 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 Town or private entity in accordance with Article III.D.1. The Town shall make a written determination of the nature and scope of the protection to be afforded by the Town under this subdivision.

The Town is authorized and obligated to protect only confidential information and thus, will not protect any portion of a proposal from disclosure unless expressly permitted by law. If the written determination provides less protection than requested by the private entity, the private entity shall be accorded an opportunity to withdraw its proposal. A proposal withdrawn under this Article will be treated in the same manner as a proposal not accepted for publication and conceptual phase consideration as provided below in Article V.B.2, except that all or a portion of the proposal review fee may be retained by the Town at its sole discretion to cover the costs of processing the proposal, including determinations regarding disclosure pursuant to this Article.

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

3. In accordance with Va. Code § 2.2-3705.11, the Town and a private entity may enter a written confidentiality agreement upon mutually acceptable terms regarding the treatment of confidential and proprietary data or materials included in a proposal submitted under these guidelines.
4. Protection from Mandatory Disclosure for Certain Documents Produced by the Town.

Memoranda, staff evaluations, or other records prepared by or for the Town for the evaluation and negotiation of proposals may be withheld from disclosure if the disclosure of such records required by the PPEA or PPTA would adversely affect the financial interest or bargaining position of the Town or private entity and the basis for the determination of adverse effect is documented in writing by the Town.

5. If a private entity fails to earmark confidential or proprietary information, records or documents for protection from disclosure, such information, records or documents shall be subject to disclosure under the FOIA.
6. The Town may not withhold from public access: (i) procurement records other than those subject to the written determination of the Town; (ii) 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 Town and the private entity; (iii) information concerning the terms and conditions of any financing arrangement that involves the use of public funds; or, (iv) information

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

7. Once a Comprehensive Agreement has been entered into, and the process of bargaining of all phases or aspects of the Comprehensive Agreement is complete, the Town shall make available, upon request, procurement records in accordance with Va. Code § 2.2-4342.

E. Use of Public Funds

Virginia constitutional and statutory requirements as they apply to the appropriation and expenditure of public funds apply to any Interim or Comprehensive Agreement entered into under the PPEA or PPTA. Accordingly, the Town shall incorporate all of the processes and procedural requirements associated with the expenditure or obligation of public funds into planning for any PPEA or PPTA project(s).

F. Applicability of Other Laws

Nothing in the PPEA or PPTA shall affect the duty of the Town to comply with all other federal, state, and local laws including provisions of the Town's ordinances and resolutions not in conflict therewith. In particular, the applicability of the Virginia Public Procurement Act shall be as set forth in the PPEA and PPTA. Nothing in these Guidelines or an Interim or Comprehensive Agreement shall be deemed to enlarge, diminish or affection the authority or supremacy of any federal, state or local laws or regulations.

G. Schedule

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

Initial Submission Review	1 - 3 Months
Publication & Receipt of Competitive Proposals	2 - 4 Months
Conceptual Phase Review	1 - 3 Months
Selection of Proposal for Detailed Phase Review	1 - 2 Months
Detailed Phase Review & Selection	3 - 9 Months
Negotiation of Interim or Comprehensive Agreement	3 - 6 Months

Any proposals submitted pursuant to these Guidelines will contain estimated schedules for each phase.

IV. Solicited Proposals

The procedures and requirements applicable to a solicited bid or proposal shall be specified in the proposal and shall be consistent with the requirements of the PPEA or PPTA and other applicable law. All such solicitations shall be by issuance of a written Invitation for Bid ("IFB") or Request for Proposal ("RFP"), in accordance with the Town's ordinances and resolutions. For transportation facilities, the Town shall provide a finding of public interest pursuant to Section 33.2-1803.1 of the Code of Virginia.

The RFP or IFB 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 Town's notices, including the Town's website. Notices may be advertised in *Virginia Business Opportunities* on the Commonwealth's electronic procurement site commonly known as "eVA". Notices can also be published in a newspaper or other publications of general circulation. The RFP or IFB 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 Town Manager.

Any proposal submitted pursuant to the PPEA or PPTA that is not received in response to an IFB or RFP shall be deemed an Unsolicited Proposal under Article V. Unsolicited Proposals shall include (a) proposals received in response to a notice issued by the Town that it has received another Unsolicited Proposal, and (b) proposals received in response to publicity by the Town concerning particular needs but where the Town has not issued a formal IFB or RFP.

V. Unsolicited Proposals

The Town may publicize its needs and may encourage interested parties to submit unsolicited proposals subject to the terms and conditions of the PPEA or PPTA. When such proposals are received without issuance of an RFP, the proposal shall be treated as an Unsolicited Proposal. The Town will evaluate an unsolicited proposal if it meets the requirements under the PPEA or PPTA, as applicable, and these Guidelines.

The following four-step procedure for evaluating Unsolicited Proposals shall serve as the Town's general process for encouraging the receipt and consideration of proposed projects under the PPEA or PPTA. This procedure shall not preclude the Town, however, from discontinuing its evaluation of any proposal at any time, for any reason. Furthermore, if the Town determines that it is in the Town's interest to do so with respect to any Unsolicited Proposal, the Town may cease or eliminate review at the initial or conceptual phase and proceed directly to the detailed review phase.

A. Step One: Decision to Accept and Consider an Unsolicited Proposal

1. Delivery of Initial Submission

Any private entity seeking to submit an Unsolicited Proposal under the PPEA or PPTA to the Town shall deliver ten (10) complete copies, as provided below, to the Town Manager. The term "Public Private Education Facilities and Infrastructure Proposal" or "Public Private Transportation Proposal" must be clearly labeled on the outside of the envelope or package. A working group may be designated by the Town Manager to review and evaluate any such proposal. A list of all local jurisdictions being provided a copy of the proposal must accompany the initial or conceptual proposal with the name and address of recipient and date delivered.

Upon receipt of any Unsolicited Proposal, the Town Manager will conduct a preliminary review of the proposal to determine if additional information is needed to make an initial determination of whether (i) the proposal is a qualifying project under the PPEA or a qualifying transportation project under the PPTA, (ii) the proposal meets all other requirements for further consideration under the Acts and these Guidelines, and (iii) it is in the Town's interest to proceed with further review of the proposal. The Town Manager may consult other Town employees, the Town Council, or outside resources, as he may deem necessary. If the Town Manager decides to proceed with consideration of the Unsolicited Proposal, the Town Manager, will notify the proposer of acceptance for consideration and collect Conceptual Phase Review Fees as may be required.

If the Town Manager determines not to accept the initial proposal for further consideration, he shall notify the proposer and Town Council in writing, with an explanation of why no further consideration is warranted. All documents and fees charged for the initial review of the Unsolicited Proposal will be returned to the proposer.

2. Contents of Initial Submission

- (i) An Unsolicited Proposal must contain information on the proposer's qualifications and experience, project characteristics, project financing, anticipated public reaction, and project benefit and compatibility. Required format and information to satisfy these requirements are included in Article V.C.5. Initial information may be brief but must be sufficient to enable the Town to evaluate the practicality and sufficiency of the proposal.
- (ii) Unsolicited Proposals shall provide a concise description of the applicant's capability to complete the proposed qualifying project and the benefits to be derived from the project by the Town. Project benefits to be considered may include benefits to be realized during the construction, renovation, expansion, acquisition, or improvement phase as well as during the life cycle of the project. Proposals also shall include a scope of work and a financial plan for the project containing enough detail to allow an analysis by the Town

of the financial feasibility of the proposed project, including but not limited to: (a) identity of any parties expected or provide financing for the project; and (b) a statement indicating whether the applicant intends to request the Town to provide resources for financing the project and the nature and extent of any such resources.

- (iii) To become subject to the evaluation and selection process under the PPTA, the proposal must comply with the following additional criteria. First, the proposal must seek approval for a private entity to acquire, construct, improve, maintain, finance, and/or operate specified transportation facilities. Second, the transportation facilities so specified must be one or a combination of the following: a road, bridge, tunnel, overpass, ferry, airport, mass transit facility, vehicle parking facility, port facility or similar commercial facility used for the transportation of persons or goods. The Town must currently have either the power itself, or the ability to assert the power, to perform the functions the proposer seeks to perform with respect to at least a portion of the specified transportation facilities.
- (iv) The Town may require additional data or submissions to clarify information previously provided or to address other areas of concern to the Town.

B. Step Two: Notice of Decision to Proceed with Conceptual Phase Review

1. Upon review of the Initial Submission, the Town may choose to accept an Unsolicited Proposal for Conceptual Phase consideration and will so notify the proposer of its decision.
2. If the Town chooses not to accept an Unsolicited Proposal for Conceptual Phase consideration, the Initial Review Fee shall be promptly returned to the proposer.
3. Within 10 working days of a determination to accept an Unsolicited Proposal for Conceptual Phase consideration, the Town shall post and publish a notice of the Town's decision to accept the proposal for Conceptual Phase consideration. Such notice is intended to encourage competition and must be posted in a public area regularly used by the Town for the posting of public notices for a period of not less than 120 days for PPTA proposals and 45 days for PPEA proposals. If the Town accepts the proposal for consideration under the PPEA, the Town shall also publish such notice in *Virginia Business Opportunities* (VBO) on the eVA site. Said notices shall state that the Town: (i) has received and accepted an Unsolicited Proposal under the Act; (ii) intends to evaluate proposal; (iii) may negotiate an interim and/or Comprehensive Agreement with the proposer; and (iv) will accept for simultaneous consideration, within a specific period of time of not less than 120 days for PPTA proposals or 45 days for PPEA proposals, any competing proposals that comply with Town regulations. The notice shall also summarize the proposed qualifying project and identify its proposed location. Note: The Town at its sole discretion may extend these notice periods.

4. During the 120-day or 45-day period for receiving competing Unsolicited Proposals, the Town may continue to evaluate the original Unsolicited Proposal. Representatives of the Town are encouraged to answer question from private entities that are contemplating submission of a competing unsolicited proposal.
5. Posting Requirements:
 - a. A conceptual proposal, whether solicited or unsolicited, shall be posted by the Town within 10 working days after the acceptance of such proposals. Posting shall be on the Town's website. In addition, a summary of the conceptual proposal may be posted by publication, in a newspaper of general circulation in the area in which the contract is to be performed. The posting shall identify the location where copies of the proposal are available for public inspection. At its discretion, the Town may also post on the VBO site.
 - b. Nothing shall be construed to prohibit the posting of a conceptual proposal by additional means deemed appropriate by the Town so as to provide maximum notice to the public of the opportunity to inspect the proposals
 - c. In addition to the posting requirements, at least one copy of the proposal 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 11 of § 2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the Town 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.
 - d. If state or federal funds are anticipated in a PPTA proposal, the proposer will be responsible for notifying the Virginia Department of Transportation or the Federal Highway Agency, as the case may be.
 - e. A copy of the proposal shall be sent by the proposer to each affected local jurisdiction, as defined in the Act, that is not a responsible public entity. The Town will send a request for comments on any proposed qualifying transportation facility indicating whether the facility will address the needs identified in the appropriate state, regional, or local transportation plan by improving safety, reducing congestion, increasing capacity and/or enhancing economic efficiency. Affected local jurisdictions shall have 60 days from receipt of the request for comments to submit written comments to the Town. If no comments are received within the 60-day period, the Town will conclude that the affected local jurisdiction has no comments on the proposal.

C. Step Three: Conceptual Phase Review

1. Only conceptual proposals complying with the requirements of the PPEA or PPTA and these Guidelines, containing sufficient information for a meaningful evaluation, and provided in an appropriate format, as described below, will be considered by the Town for further review at the Conceptual Phase.
2. After reviewing the Unsolicited Proposal and any competing Unsolicited Proposals submitted during the notice period, the Town may determine: (i) not to proceed further with any proposal; (ii) to proceed to the Detailed Phase with the original proposal; (iii) to proceed to the Detailed Phase review with a competing proposal; or (iv) to proceed to the Detailed Phase review with multiple proposals.
3. Discussions between the Town and private entity about the need for infrastructure improvements shall not limit the ability of a public entity to later determine to use standard procurement procedures to meet its infrastructure needs. The Town retains the right to reject any proposal at any time for any reason prior to the execution of an Interim or Comprehensive Agreement.
4. Format for Submissions at the Conceptual Phase: Unsolicited Proposals at the Conceptual Phase shall contain as a minimum, general information in the following areas: (i) qualifications and experience; (ii) project characteristics; (iii) project financing; and (iv) anticipated public support and/or opposition. More in-depth information about these areas may be required at the Detailed Phase. Unless waived by the Town Manager, the following format and general information are required in the proposal at this phase. The Town Manager may request additional information as he deems appropriate.

(i) Qualification and Experience

- a. Identify the legal structure of the firm or consortium of firms making the proposal (i.e. corporation, partnership, joint venture, limited liability corporation.). Identify the organizational structure for the project, the management approach, and how each principal (i.e. major shareholder, member, partner) and major subcontractor in the structure fit 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, e-mail and telephone numbers of persons 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 five percent (5%) or greater.
- e. Identify any persons known to the applicant who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to Virginia State and Local Government Conflict of Interest Act (Va. Code §§ 2.2-3100 *et seq.*).

(ii) Project Characteristics

- a. Provide a description of the project, including the conceptual design and in the case of transportation facilities, all proposed interconnections with other transportation facilities. 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. Provide the proposed date for development and/or operation of the transportation facility or other facilities, along with an estimate of the life-cycle cost of the facility as proposed.
- c. Provide a statement setting forth the risks, liabilities and responsibilities to be transferred, assigned, or assumed by the private entity for the development and/or operation of the transportation facility or other facility, including revenue risk and operations and maintenance.
- d. Identify and fully describe any work to be performed by the Town or any other private entity.
- e. 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.
- f. Include a list of public utilities or other facilities that will be crossed by the proposed facility and a statement of the plans of the private entity to accommodate such crossings.
- g. Identify any anticipated adverse social, economic, and environmental impacts of the project. Specify the strategies or actions to mitigate such impacts of the project.
- h. Identify the projected positive social, economic and environmental impacts of the project.

- i. Identify the proposed schedule for the work on the project, including the estimated time for completion.
- j. Propose allocation of risk and liability for work completed beyond the project completion date, and assurances for timely completion of the project.
- k. Provide assumptions related to ownership, legal liability, law enforcement and operation of the project and the existence of any restrictions on the Town's use of the project.
- l. Provide information relative to phased or partial openings of the proposed project prior to completion of the entire work.
- m. Describe any architectural (including, where appropriate, historic district considerations), building, engineering, or other applicable standards that the proposed project will meet or exceed.
- n. Describe the method by which all necessary property interests, including rights-of-way or easements, are to be secured. Include the names and addresses of current property owners, if known, the nature of property to be acquired, and a description of any property that the Town is expected to condemn.
- o. Provide safety records for contractors and subcontractors for the past five years, including a list of any OSHA violations. Describe steps to be taken to prevent the spread of communicable disease.

(iii) Project Financing

- a. Provide a preliminary estimate and describe the estimating methodology of the cost of the work by phase, segment, or both.
- b. Provide a statement setting forth the private entity's general plan for developing and/or operating the transportation facility or other facilities, including identification of any revenue, public or private, or proposed debt or equity investment or concession proposed by the private entity
- c. 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.
- d. Include a list and discussion of assumptions underlying all major elements of the plan.
- e. Identify the proposed risk factors and methods for dealing with these factors.

- f. 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 identify of each such source) and the timing of any anticipated commitment.
- g. Identify the amounts and the terms and conditions for any revenue sources, including any third parties that the applicant contemplates will provide financing for the project, and describe the nature and timing of each such commitment.
- h. Identify any aspect of the project that could disqualify the project from eligibility for tax-exempt financing.

(iv) Project Benefit and Compatibility

- a. Describe the anticipated benefits to the community, region, or state, including anticipated benefits to the economic condition of the Town, 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.
- d. Explain whether the project is likely to attract or maintain industries and businesses to the Town or the surrounding region and, if so, explain how.
- e. Explain whether the project is compatible with the Town's comprehensive plan, infrastructure development plans, capital improvements budget, or other government spending plan and, if so, explain how.
- f. For PPTA projects, explain whether the proposed improvements are compatible with present and planned regional and local transportation systems, and whether the project will provide continuity with existing local and state facilities.

D. Step Four: The Detailed Review Phase

- 1. If the Town decides to proceed to the Detailed Phase review with one or more Unsolicited Proposals, then the following information, along with detailed information concerning the items listed in Article V.C.4, shall be provided by the proposer unless included in the Conceptual Phase proposal or expressly waived by the Town Manager:

- (i) A topographical map (1:2000 or other appropriate scale) depicting the location of the proposed project.
- (ii) 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.
- (iii) A statement and strategy setting out the plans for securing all necessary property. The statement shall include the names and addresses, if known, of the current owners of the subject property as well as a list of any property the proposer intends to request the Town to condemn.
- (iv) 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.
- (v) 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.
- (vi) A detailed discussion of assumptions about user fees or rates, and usage of the projects.
- (vii) 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.
- (viii) Demonstration of consistency with appropriate local comprehensive or infrastructure development plans or indication of the steps required for acceptance into such plans.
- (ix) Explanation of how the proposed project would impact local development plans of each affected local jurisdiction.
- (x) Identification of any known conflicts of interest or other disabilities that may impact the Town'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.*).

- (xi) Detailed analysis of the financial feasibility of the proposed project, including its impact on similar facilities operated or planned by the Town. Include a detailed description of any financial plan proposed for the project, a comparison of that plan with financing alternatives that may be available to the Town, and all underlying data supporting any conclusions reached in the analysis or the selection by the applicant of the financing plan proposed for the project.
- (xii) Additional material and information as the Town may request.

VI. Proposal Evaluation and Selection Criteria

In addition to evaluation of materials and detailed information described in Article V above, some or all of the following matters may be considered in the evaluation and selection of PPEA or PPTA proposals.

A. Qualifications and Experience

Factors to be considered in either phase of the Town's review to determine whether the proposer possesses the requisite qualifications and experience may include but shall not be limited to:

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.
7. Project ownership.

B. Project Characteristics

Factors to be considered in determining the project characteristics may include but shall not be 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.
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 shall not be limited to:

1. Cost and cost benefit to the Town.
2. Financing and the impact on the debt or debt burden of the Town.
3. Financial plan, including the 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. Estimated cost.
5. Life-cycle cost analysis.
6. The identity, credit history, past performance of any third party that will provide financing or performance guaranties 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 shall not be limited to:

1. Community benefits.
2. Community support or opposition, or both.

3. Public involvement strategy.
4. Compatibility with existing and planned facilities.
5. Compatibility with local, regional, and state economic development efforts.

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

E. Other Factors

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

1. The proposed cost of the qualifying project or qualifying transportation facility.
2. The general reputation, industry experience, and financial capacity of the private entity.
3. The proposed design of the qualifying project or qualifying transportation facility.
4. The eligibility of the project for accelerated documentation, review, and selection.
5. Local citizen and government comments.
6. Benefits to the public.
7. The private entity's compliance with a minority business enterprise participation plan or good faith effort to comply with the goals of such plans.
8. The private entity's plans to employ local contractors and residents.
9. Other criteria that the Town deems appropriate.

In evaluating a proposal, the Town may rely on internal staff reports or the advice of outside advisors or consultants having relevant experience. The Town shall engage the services of qualified professionals 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 the Town Council determines that such analysis of a request shall be performed by the Town's employees.

Proposals shall be evaluated on the basis of how well the proposer or proposers have met the criteria in Articles V and VI above. In the case of transportation facilities, the Town shall engage in the analysis required by Virginia Code Section 33.2- 1803.1:1, as may be applicable. In the case of

PPEA projects, the Town shall consult Virginia Code Section 56-575.4 in determining whether (i) the project will serve a public need or provide a public benefit, (ii) the estimated cost of the project is reasonable in relation to similar facilities, and (iii) the proposal will result in the timely development or operation of the project.

VII. Interim and Comprehensive Agreements

Prior to developing or operating the qualifying project or qualifying transportation facility, the selected private entity shall enter into a Comprehensive Agreement with the Town and may enter into an Interim agreement as described in Article VII.A. The Town may designate a working group to be responsible for negotiating any interim or comprehensive agreement. Any Interim or Comprehensive Agreement shall define the rights and obligations of the Town and the selected proposer with regard to the project. Any such Interim or Comprehensive Agreement, and any amendment thereto, shall be approved by the Town Council and contain the terms outlined (unless deemed by the Town Manager to be unnecessary or inapplicable).

A. Interim Agreement Terms

Prior to entering into a Comprehensive Agreement with the Town, an Interim Agreement may be entered into that permits a private entity to perform compensable activities related to the project.

The scope of an Interim Agreement may permit the private entity to commence activities for which it may be compensated relating to the proposed facility, including, but shall not be limited to, the following:

1. Project planning and development.
2. Design and engineering.
3. Environmental analysis and mitigation.
4. Site planning and survey.
5. Ascertaining the availability of financing for the proposed facility through financial and revenue analysis.
6. Establishing a process for and timing of the negotiation of the comprehensive agreement.
7. Any other provisions related to any aspect of the development or operation of a qualifying project or qualifying transportation facility that the parties deem appropriate prior to the execution of a Comprehensive Agreement.

B. Comprehensive Agreement Terms

Prior to the development or operation of a qualifying transportation facility or a PPEA facility, the private entity shall enter into a Comprehensive Agreement with the Town. The scope of a Comprehensive Agreement shall include, but not be limited to, the following:

1. Delivery of maintenance, performance, and payment bonds or letters of credit or guaranties in connection with any acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the qualifying project or qualifying transportation facility, in the forms and amounts satisfactory to the Town.
2. Review and approval of plans and specifications for the qualifying project or qualifying transportation facility by the Town.
3. The right of the Town to inspect the qualifying project or qualifying transportation facility to ensure compliance with the Comprehensive Agreement and with regulatory and other standards.
4. Maintenance of a policy or policies of liability insurance or self-insurance in form and amount satisfactory to the Town and 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 or qualifying transportation facility.
5. The design, construction, operation, and maintenance standards with which the private entity must comply and means of monitoring operation and maintenance practices of the private entity.
6. The terms under which the private entity will reimburse the Town for services provided.
7. Policies and procedures governing the rights and responsibilities of the Town and the private entity 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 private entity by the Town and the transfer or purchase of property or other interests of the private entity by the Town.
8. Duties of the Town required by law or as agreed upon by the parties.
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 are the same for persons using the facility under like conditions and that will not materially discourage use for the qualifying project. In addition:
 - (i) A copy of any service contract shall be filed with the Town.

- (ii) 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.
 - (iii) Classifications according to reasonable categories for assessment of user fees may be made.
- 10. The terms and conditions under which the Town may contribute financial resources, if any, for the qualifying project or qualifying transportation facility.
- 11. The terms and conditions under which existing site conditions will be assessed and addressed, including indemnification of the Town for conducting the assessment and taking necessary remedial action.
- 12. Provisions for the development or operation of phases or segments of a qualifying project.
- 13. The obligation of the private entity to maintain any transportation facility, building or structure to be constructed under the Comprehensive Agreement and the rights of the Town, and/or VDOT or FHWA if appropriate, to monitor such maintenance.
- 14. The date of termination of the private entity's authority and duties and dedication of facilities to the Town or other appropriate public entity.
- 15. Filing of appropriate financial statements in a form acceptable to the Town on a periodic basis.
- 16. Compensation to the private entity that may include a reasonable development fee, a reasonable maximum rate of return on investment, and/or reimbursement of development expenses in the event of termination for convenience by the Town. Where applicable, include the formula by which the maximum rate of return will be calculated, the distribution of any earning in excess of the negotiated maximum rate of return, and the payment of remaining revenues to the private entity upon occurrence and during the continuation of material default.
- 17. The rights of the Town to dedicate or convey property interests to the private entity for public use, which may include licenses, franchises, easements, or any other right or interest the Town deems appropriate.
- 18. Events that will constitute default, rights to notice and available remedies. In the event of a material default in a Comprehensive Agreement entered under the PPTA, the Town may exercise the remedies provided in Section 33.2-1813 of the Code of Virginia. In the event of a material default in a Comprehensive Agreement entered under the PPEA, the Town may exercise the remedies provided in Section 56-575.11 of the Code of Virginia.

19. Events that will constitute force majeure and the remedies the parties will have in the event of occurrence.
20. Guaranteed costs and completion guarantees related to the development and/or operation of the transportation facility or other facility and payment of liquidated damages for failure to meet the completion guarantee.
21. User fees to be set at a level that takes into account lease payments, service payments, compensation to the private entity, and which fees are the same for persons using the facility under like conditions.
22. The obligation of the private entity to maintain records, to allow inspection and audit and to file appropriate financial statements in form and frequency acceptable to the Town.
23. The conditions under which the private entity or the Town may assign its rights under the Comprehensive Agreement and/or its rights in the transportation facility or other public facility.
24. Any other agreed upon terms and conditions.
25. All requirements of the PPEA, PPTA, and other applicable law.

In the case of construction or design-build agreements under either the PPEA or PPTA, the Town is likely to require the following additional provisions: liquidated damages for delayed completion; warranties regarding workmanship, materials, guarantees that the project will be fully operational and suitable for the Town's intended purposes; retainage of progress payments; disputes resolution; mutual waivers of subrogation and of consequential damages. Private entities are urged to address such risk allocation provisions in the preparation of conceptual and/or detailed proposals.

Any changes to the terms of the Interim or Comprehensive Agreement may be agreed upon by the parties from time to time shall be added to the Interim or Comprehensive Agreement only by written amendment.

C. Comprehensive Agreement Provisions Relating to Construction Projects

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

1. In design-build construction projects the private entity will be expected to assume single-point responsibility and liability for all design and construction activities.
2. To the fullest extent possible, the private entity shall perform its own geotechnical investigation of subsurface conditions at the project site. The risk of inadequate geotechnical investigation or improper interpretation of the results of the

geotechnical investigation will be allocated to the private entity in the Comprehensive Agreement. The Town will consider assuming part or all of the risk of subsurface conditions that could not reasonably be foreseen notwithstanding the performance of a geotechnical investigation meeting the ordinary standard of care of geotechnical engineers working under similar conditions.

3. The Town encourages private entities to propose a formula for the mutual sharing of cost savings realized during construction by virtue of value engineering initiatives, guaranteed maximum price with saving sharing provisions, trade allowances or otherwise. Mutually agreed upon terms for the sharing of such savings will be incorporated in the Comprehensive Agreement.

D. Comprehensive Agreement Provisions Relating to Private Entity Legal Structure

The Town is willing to enter Comprehensive Agreements with private entities that have formed business associations such as joint ventures and limited liability corporations ("LLC"). In such cases, however, the Town will expect one or more of the principal members of the association to provide a performance guaranty of all obligations undertaken in the comprehensive agreement. This requirement is in addition to the statutory requirement for a performance bond. Individuals, corporations and other businesses interested in entering public-private partnerships with the Town under the PPEA or PPTA must be willing to provide this security if their proposal is submitted as part of a joint venture, LLC or other business entity that limits the liability of its members, owners or partners.

E. Notice and Posting Requirements

1. In addition to the posting requirements of Article V, 30 days prior to entering into an Interim or Comprehensive Agreement, the Town shall provide an opportunity for public comment of the proposals. Such public comment period may include a duly advertised public hearing in the sole discretion of the Town.
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 Town, the Town shall (i) post the major business points of the Interim or Comprehensive Agreement, including the projected use of any public funds, and (ii) outline how the public can submit comments on those major business points. Posting shall be the following manner:
 - a. Posting shall be on the Town's website and for transportation facilities, on the Virginia Department of General Services' central electronic procurement website. In addition, the Town may publish a summary of the agreement in a newspaper of general circulation in the area in which the contract is to be performed. At its discretion, the Town may also post on the VBO site and eVA.

- b. In addition to the posting requirements, at least one copy of the Interim or Comprehensive Agreement 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 11 of § 2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the Town 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.

Prior to entering either an Interim or Comprehensive Agreement, the major business points of such agreements, including the use of any public funds, shall be presented to the Town Council at a meeting open to the public. Note that a public hearing may be required under Virginia Code Section 15.2-1800, if the Town's real property is being conveyed. A three-fourths vote of approval by the members elected to the Town Council may also be required under Virginia Code Section 15.2-2100.

- 3. Once an Interim or a Comprehensive Agreement has been entered into, the Town 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 adversely affected the financial interest or bargaining position of the Town or private entity in accordance with Section II.D.2.
 - b. Such procurement records shall not include (i) Trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336, *et seq.*); or 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.

F. Audits for Certain Qualifying Transportation Facilities

For any qualifying transportation facility project with an estimated construction cost of over \$50 Million, the responsible public entity also shall require the private entity to pay the costs for an independent audit of any and all traffic cost estimates associated with the private entity's proposal, as well as a review of all public costs and potential liabilities to which taxpayers could be exposed. This independent audit shall be conducted by an independent consultant selected by the responsible public entity, and all such information from such review shall be fully disclosed.

G. Filing of Comprehensive Agreement with Auditor of Public Accounts

Within 30 days of entering into a Comprehensive Agreement, the Town submit a copy of the Comprehensive Agreement to the Virginia Auditor of Public Accounts.



Town of Cape Charles ABBREVIATED PPEA/PPTA GUIDELINES PROCEDURE FOR UNSOLICITED PROPOSALS

The following represents a summary of the Town of Cape Charles PPEA/PPTA Guidelines outlining abbreviated procedures for unsolicited proposals, as set out in the Town's Guidelines and Virginia law. **This is quick reference tool only** and staff is advised to consult the Guidelines and the Code of Virginia for a complete understanding of the requirements of the PPTA and PPEA.

Step 1 - Unsolicited proposal is received (Initial Submission) from proposer. Note: proposer is responsible for providing copies of the proposal to any affected locality, as defined in the Guidelines, and such affected locality has 60 days to present comments.

Step 2 – The Town Manager will review initial submissions to determine if it meets PPTA/PPEA requirements and if it is in the best interest of the Town to proceed with this process. Town Manager may then accept the unsolicited proposal for consideration as a conceptual proposal (Conceptual Phase). Alternatively, the Town Manager may reject the unsolicited proposal for any reason and if so, is to notify the Town Council and proposer in writing and must return the unsolicited proposal (and any fees charged) to the proposer.

Step 3 – If the unsolicited proposal is accepted for consideration in the Conceptual Phase, the Town must, within 10 working days of the acceptance, post and publish a notice of the Town's decision to accept the proposal for Conceptual Phase consideration. The posting shall be for a minimum period of 120 days for a PPTA proposal or 45 days for a PPEA proposal and shall invite competing proposals.

Step 4 - The proposer (and possibly competitors) submits a Conceptual Phase proposal. This Conceptual Phase proposal may be submitted and preliminarily evaluated during the posting period. The Conceptual Phase proposal must satisfy the requirements of the Guidelines (unless waived by the Town Manager) and the Acts. A fee of at least \$5,000 is required for the review, and this fee may be increased if warranted by the scope and complexity of the project.

Step 5 – After the posting period ends, the Town evaluates all Conceptual Phase proposals received. The Town may accept one or more for consideration as a detailed proposal (Detailed Phase). The Town may also reject all Conceptual Proposals in writing and return the Conceptual Phase proposal(s) and review fee to the proposer(s).

Step 6 – If a Conceptual Phase proposal is accepted by the Town for further evaluation, the proposer shall submit a Detailed Phase proposal with the required fee (not to exceed \$50,000). This Detailed Phase proposal must satisfy the requirements of the Guidelines (unless waived by the Town) and the Acts.

Step 7 – The Town evaluates the Detailed Phase proposal in accordance with the criteria set forth in the Guidelines. In order to enter into a Comprehensive Agreement, the Town must make certain findings required by the Acts (see Article VI of the Guidelines). The Town may be required to engage outside consultants for independent analysis of the Detailed Phase proposal in accordance with Virginia Code Section 56-575.3:1, unless the Town Council finds that Town employees will perform required analyses.

Prior to acceptance of a Detailed Phase Proposal, the Town must make required findings of public interest for a PPTA qualifying transportation project (Virginia Code Section 33.2-1803.1) and public purpose for a PPEA qualifying project (Virginia Code Section 56-575.4).

The Town may reject the Detailed Phase Proposal at any time.

Step 8 – If the Detailed Phase proposal is accepted, the Town and the proposer then engage in negotiation of a Comprehensive Agreement. The Comprehensive Agreement is mandatory and must be approved by the Town Council. The Town and the proposer may also enter into an Interim Agreement, which is discretionary and subject to Town Council approval.

Step 9 – At least 30 days prior to entering into an Interim Agreement or a Comprehensive Agreement, post notice for public comments. The notice shall include a description of the major business points of the Agreement, including the proposed use of public funds, and shall provide information on the available means of providing comments. In addition, a copy of the Interim or Comprehensive Agreement shall be made available for public inspection (except privileged materials).

Step 10 – At least 30 days prior to entering into an Interim Agreement or a Comprehensive Agreement for a PPEA qualifying project, hold a public hearing for public comments and make copy of the proposal available to the public. For PPTA qualifying transportation projects, public hearing is discretionary but must allow public comment on major business points, including expenditure of public funds, presented to the Town Council at a meeting open to the public.

Note that if the Interim or Comprehensive Agreement includes the conveyance of real property interests, a public hearing shall be required under Virginia Code Section 15.2-1800 (unless one of the listed exceptions applies), and the conveyance must be approved by a three-fourths vote of all members elected to the Town Council as required by Virginia Code Section 15.2-2100.

Step 11 – Once a Comprehensive Agreement is approved by the Town Council and finalized, the Town Manager shall send a copy to the Virginia Auditor of Public Accounts.

TIMELINES

The Guidelines include various timelines, which can be adjusted by the Town as appropriate, unless they are mandated by statute. The mandated statutory timelines are as follows:

PPEA:

Va. Code Section 56-575.17(A) – post notice of decision to accept an unsolicited proposal for conceptual phase review and to invite competing proposals within 10 days of such acceptance. The minimum duration of the posting is not set forth in the PPEA but must be a reasonable period of time (Guidelines provide for 45 days).

Va. Code Section 56-575.6 – give any affected jurisdiction, as defined in the Guidelines, 60 days to respond to the proposal. The 60-day period runs from its receipt of notice of the proposal from the proposer.

Va. Code Section 56-575.17(B) – hold a public hearing during the proposal review process but not later than 30 days before entering into an interim or comprehensive agreement.

Va. Code Section 56-575.17(C) – prior to entering into an interim or comprehensive agreement, make the agreement available to the public in the same manner as the initial submission was made available to the public (website, etc.). No minimum time period is provided.

PPTA:

Va. Code Section 33.2-1820(A) – post notice of decision to accept an initial submission for conceptual phase review and to accept competing proposals within 10 days of such acceptance. Minimum posting time is 120 days.

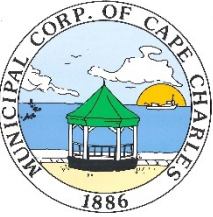
Va. Code Section 33.2-1805 – affected jurisdictions have 60 days to respond to the locality's request for comments.

Va. Code Section 33.2-1820(B) – 30 days prior to entering into an interim agreement or comprehensive agreement, provide an opportunity for public comment, which may include a public hearing.

Va. Code Section 33.2-1820(C) – post the major business points of the interim or comprehensive agreement for public comment and present these major business points to the local governing body at a meeting open to the public. No minimum time period is provided.

DECISION POINTS

- Town Manager decides to accept an Initial Submission for consideration in the conceptual phase.
- Town Council decides to accept one or more Conceptual Phase Proposals for Detailed Phase review.
- Town Council decides whether Town staff will perform analysis required in Detailed Phase review.
- Town Council decides to accept a Detailed Phase Proposal and makes statutorily required findings.
- Town Council receives public comments on proposed Interim or Comprehensive Agreement and acts on such Agreement.

 TOWN OF CAPE CHARLES	AGENDA TITLE: Oyster Farm Directional Sign at Fig Street and Randolph Avenue		AGENDA DATE: September 3, 2020
	SUBJECT/PROPOSAL/REQUEST: Discussion of the Oyster Farm directions sign at Fig Street and Randolph Avenue		ITEM NUMBER: 7D
	ATTACHMENTS: Original Request from January 2016, Ordinance 20141009, Excerpt from March 17, 2016 Town Council Regular Meeting Minutes, August 21, 2020 Email from Bill Parr		FOR COUNCIL: Action (X) Information ()
	STAFF CONTACT (s): Libby Hume, Town Clerk	REVIEWED BY: John Hozey, Town Manager	

BACKGROUND:

At the March 17, 2016 Town Council Regular Meeting, a request from Peacock Holdings VA LLC dba The Oyster Farm at Kings Creek was reviewed for Council permission to erect a wooden free-standing directional sign on the Town-owned lot at the corner of Fig Street and Randolph Avenue. The staff report from that meeting cited Ordinance 20141009-Temporary Suspension of Enforcement for a Portion of the Sign Regulation for Businesses Located on Side Streets as the basis for staff's recommendation to grant the "time-limited, temporary permit" for the placement of the sign. The Ordinance temporarily suspended enforcement of a portion of the sign ordinance "until such time that a way-finding sign is installed on Mason Avenue or the sign regulations are revisited" and was adopted by unanimous vote on October 9, 2014. Council granted the request to place a "temporary sign on the Town-owned property at the corner of Fig Street and Randolph Avenue in a location approved by Chief Pruitt."

At the August 6, 2020 Town Council work session, during the discussion regarding interim wayfinding signs, the issue of private businesses placing their own signs on the corner of Fig Street and Randolph Avenue was brought up by a Council member, asking how the Town could permit one business to monopolize the intersection and adding that other businesses would like to have their signs at the location as well. John Hozey stated that he would look into the matter.

DISCUSSION:

At the request of the town manager, an email was sent to The Oyster Farm requesting the removal of the directional sign.

On August 21, 2020, an email was received from Bill Parr, representative for Peacock Holdings Va LLC and Cherrystone Creek LLC, the owners and operators of The Oyster Farm at Kings Creek, requesting rescission of the order to remove the sign.

RECOMMENDATION:

Staff recommends Council review of the information provided, discussion regarding this matter, and a vote regarding the August 21, 2020 request from Mr. Parr to rescind the order to remove the signage.

Peacock Holdings Va. LLC. dba
THE OYSTER FARM AT KINGS CREEK
500 Marina Village Circle
Cape Charles Va. 23310

January 29, 2016

Cape Charles Town Council
Mayor George Proto
Plum Street
Cape Charles Va

RE: Sign Request for The Oyster Farm at Kings Creek on Town property

Dear Mayor Proto and Council Members

As the owner and operating entity of the 39 acre commercial complex now known as “The Oyster Farm At Kings Creek”, we have recognized the need for additional signage to identify our rather remote location within the town. I write you today to request a permit to install a permanent directional sign at the Fig Street intersection.

According to Town Planner Larry DiRe, Town Code section 6-4 “Erection of signs over, under or in streets or public places” provides that the town council may grant permission which designates the exact location, nature and dimensions for signs located on town property. At this time, we come to you to seek such permission for installation of a directional sign on town lot #83A4-1-1 on the corner of Fig and Randolph.

In this regard, the sign we are requesting is a modest six square feet in size, with a sign face of 36 inches wide by 24 inches high in a frame standing only 53 inches in height. It would be in a wood frame. We propose to make a permanent installation of the sign at the corner just inside the lot lines at a visible location free of utility pole obstructions that is agreeable to the town planner, which will not obstruct traffic visibility.

We believe that our contribution to the town’s overall economy and the magnitude of our commercial facilities warrants your favorable consideration for a sign such as this. We are in effect, requesting one sign to direct traffic to a 39 acre in town complex with several separately operated business entities, including a restaurant, an Event Center, a bait and Tackle shop, a Marina, and a Catering company, as well as Vacation Villa Rentals, golf cart rentals, bicycle rentals, and kayak and paddleboard rentals. This one sign will assist visitors in finding all of these establishments.

Mayor Proto

Jan 29, 2016

Page two

We also feel that our somewhat remote location, removed from the downtown commercial corridor and on the outer edge of the town, further warrants your favorable consideration of this request. We hope that you will agree that it is reasonable request in light of our status as both a major employer and contributor to the finances of the town as well.

I welcome the opportunity to review this request, and answer any questions that you may have.

Thanking you for your favorable consideration of our request, I am

Sincerely

Bill Parr, Manager for
Peacock Holdings Va LLC

ORDINANCE 20141009
TEMPORARY SUSPENSION OF ENFORCEMENT FOR A PORTION OF THE SIGN
REGULATION FOR BUSINESSES LOCATED ON SIDE STREETS

WHEREAS, on December 19, 2013, the revisions to Cape Charles Zoning Ordinance § 4.1-Sign Regulations were adopted by the Town Council; and

WHEREAS, off-premise signs are defined as billboards which are prohibited in the Town; and

WHEREAS, a number of businesses are located on side streets, such as Strawberry, Peach and Nectarine Streets, and are not as visible as those on Mason Avenue, causing them to lose foot traffic and business without an off-premise sign; and

WHEREAS, the Planning Commission reviewed this issue and recommended temporary suspension of a portion of the sign regulations, Section 4.1(F)11 to allow businesses on side streets to place portable signs to attract foot traffic until a way-finding sign can be installed on Mason Avenue or the sign regulations are revisited; and

WHEREAS, in an effort to support the businesses on the Town's side streets, Council agrees with the Planning Commission recommendation, provided that:

- i. any-off premise signage be limited to ten square feet in area;
- ii. the signage be located at the intersection of Mason Avenue and the street which the advertised business occupies;
- iii. the sign be removed at the end of each business day; now

THEREFORE BE IT ORDAINED by the Town Council of Cape Charles, this 9th day of October, 2014, that enforcement of a portion of the sign regulations pertaining to off-premise signs for businesses located on the Town's side streets be temporarily suspended, subject to the above conditions, until such time that a way-finding sign is installed on Mason Avenue or the sign regulations are revisited.

Adopted by the Town Council of Cape Charles on October 9, 2014.

By: _____
Mayor

ATTEST:

Town Clerk



*Municipal Corp. of
Cape Charles*

The undersigned Clerk of the Council of the Town of Cape Charles, Virginia (the “Town”), hereby certifies that:

1. A meeting of the Council of the Town (the “Council”) was duly called and held on October 9, 2014 (the “Meeting”).
2. Attached hereto is a true, correct and complete copy of Ordinance 20141009 (the “Ordinance”) of the Town entitled as recorded in full in the minutes of the Meeting, duly adopted by a majority of the members of the Council present and voting during the Meeting.
3. A summary of the members of the Council present or absent at the Meeting and the recorded vote with respect to the foregoing Resolution as set forth below:

<u>Member Name</u>	<u>Present</u>	<u>Absent</u>	<u>Voting</u>		
			<u>Yes</u>	<u>No</u>	<u>Abstaining</u>
George Proto, Mayor	X				
Chris Bannon	X		X		
Steve Bennett	X		X		
Charles Brown	X		X		
Tom Godwin	X		X		
Joan Natali	X		X		
Frank Wendell	X		X		

4. The Ordinance has not been repealed, revoked, rescinded or amended and is in full force and effect on the date hereof.

Witness my signature and the seal of the Town of Cape Charles, Virginia this 10th day of October 2014.

Clerk of the Council
Town of Cape Charles, Virginia

(Seal)



Excerpt From
TOWN COUNCIL
Regular Meeting
Civic Center
March 17, 2016
6:00 p.m.

At approximately 6:00 p.m. Mayor George Proto, having established a quorum, called to order the Regular Meeting of the Town Council. In addition to Mayor Proto, present were Vice Mayor Bannon, Councilmen Bennett, Godwin and Wendell, and Councilwoman Natali. Councilman Brown was not in attendance. Also in attendance were Town Manager Brent Manuel, Treasurer Deborah Pocock, Planner Larry DiRe, Harbor Master Charlie Farlow and Town Clerk Libby Hume. The majority of the Department Heads were in attendance as well as 9 members of the public.

PUBLIC COMMENTS:

Town Clerk Libby Hume read an email from Bill Prickett, 210 Tazewell Avenue, regarding the Oyster Farm Sign Request. (Please see attached.)

NEW BUSINESS:

A. *The Oyster Farm at Kings Creek Sign Request:*

Larry DiRe stated that Town Code section 6-4 permitted signs in public places with Council approval. A request was submitted by The Oyster Farm for permission to erect a 2' x 3' sign on the Town-owned lots at the corner of Fig Street and Randolph Avenue.

Mayor Proto invited Mr. Bill Parr, representing The Oyster Farm, to speak regarding their request.

Bill Parr stated that Mr. Prickett raised some valid issues but added that he would provide reasons why Mr. Prickett's concerns were not well grounded. The Oyster Farm was not a business but a conglomeration of 11 businesses which generated a lot of revenue for the Town. It was a large area of commerce on the fringe of the Town. Since the wayfinding signs were not as evolved as they should be, there was need for the requested signage. The people coming to The Oyster Farm also shopped in the other stores in the Town. The Oyster Farm brought hundreds of people into the Town for events and the people needed to be able to find them. Mr. Parr reiterated that The Oyster Farm was different and hoped that their modest request would be granted.

There was much discussion regarding the following: i) Council was in agreement that The Oyster Farm brought people into the Town; ii) Council was concerned regarding setting a precedent of allowing businesses to place signs on Town-owned property; iii) Councilman Bennett encouraged the Town staff to move forward with the wayfinding signs which would offer directional signs to other businesses also. Wayfinding signs were critical and needed to be located where they were most helpful; iv) It was unlikely that wayfinding signs could be designed and placed during the 2016 season; v) The majority of the Council were in agreement to allow The Oyster Farm to place temporary signage, similar to the businesses on Strawberry Street, at the corner of Fig Street and Randolph Avenue until a wayfinding sign could be placed there; and vi) Chief Pruitt expressed his concern regarding placement of the sign in a location so as not to block visibility for drivers.

Motion made by Vice Mayor Bannon, seconded by Councilman Godwin, to allow The Oyster Farm to place a 2' x 3' temporary sign on the Town-owned property at the corner of Fig Street and Randolph Avenue in a location approved by Chief Pruitt. The motion was approved by majority vote with Councilman Wendell abstaining.

Comments Submitted in Writing
March 17, 2016 Town Council Regular Meeting

Bill Prickett, 210 Tazewell Avenue

I am opposed to granting the request from Oyster Farm to place a sign on Town owned property. While I appreciate and value the contribution that the Oyster Farm makes to Cape Charles, I do not believe that there is a hardship to the business regarding prospective customers finding them. There is a large billboard that is clearly visible to all traffic entering the town directing customers to the business. I do not think the Oyster Farm is any more difficult to find than any other business in town. For example, it could be argued that the Shanty is as difficult, or more difficult to find.

Granting the request would set a precedent and other businesses could then rightly request their signage to be placed on the property. It would be difficult to justify favoring one business over another if the Oyster Farm request is granted. This could lead to a proliferation of signs on the property which in my opinion would be unsightly.

There is an existing sign at the location that directs people to among others, the business district, beach, Marina Villages, etc. I would suggest re-lettering the sign replacing "Marina Villages" with "Oyster Farm." Since it is an existing sign, there would be no precedent involved.

Yours truly,
Bill Prickett

From: **Bill Parr** <billparr@parrproperties.com>
Date: Fri, Aug 21, 2020 at 4:48 PM
Subject: Oyster Farm directional sign at Fig and Randolph
To: <manager@capecharles.org>, <planner@capecharles.org>
Cc: <mayor@capecharles.org>

Town Manager John Hozey
Town Planner Allyson Finchum

Dear Mr Hozey and Ms Finchum

I have attached my letter of request, and the resulting council meeting agenda of March 17, 2016 during which the placement of our Oyster Farm sign on town property, outside of the VDOT right of way, was discussed and debated.

While I do not have a copy of the minutes of the meeting, having presented the request, it is my belief that my request was approved. This belief is supported by the fact that we immediately installed the specified wooden sign structure, and have been allowed to maintain it on the town property for over 4 years without any problem. I do understand that the secondary vinyl banner sign was not approved, and cannot dispute the need for its removal. I believe it was intended to be a single day special event banner that staff seems to have taken for granted. We apologize for this oversight.

The Oyster Farm Commercial complex consists of over 30 acres of land, 21 commercially zoned parcels of land and improvements, which at times has had as many as 11 different business licenses for its various operations. We employ a lot of local people, up to 150 on a good year, and we are among the largest single commercial tax payers in the town.

As you know, we also have more highway billboard signage than any business in the town, along with a robust marketing program for recruiting new visitors on a regular basis. Every time we get a new customer, we share that customer with all the businesses in the town. Our businesses are in an out of the way location, distant from the downtown commercial and harbor areas. We need a directional sign such as the one we have been allowed to maintain for the past 4 years to help our customers find us.

Based on these facts, we believe that our modest request to locate a small directional sign on town property has always been both equitable and reasonable.

We believe that ordering the removal of a previously approved sign in the middle of the summer season, in the midst of the COVID crisis when most businesses, especially restaurants, are suffering, is not good policy. The Oyster Farm is a major contributor to the good of the town in many ways, and has earned the support of the town for this nominal request.

Based on these facts, I write to you today to request that you rescind the order to remove our previously approved sign and allow its properly approved placement to continue.

Thank you for your consideration. I can be reached at 757-373-6198 if you would like to discuss it further.

Bill Parr for Peacock Holdings Va LLC
and Cherrystone Creek LLC
Owner and Operators of The Oyster Farm At Kings Creek