

The Commonwealth of Virginia

The
Transportation Partnership
Opportunity Fund

Guidelines and Criteria

September 2005

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Transportation Partnership Opportunity Fund

Introduction

Chapter 847 of the 2005 Acts of Assembly (the “Act”) is the legal framework creating the Transportation Partnership Opportunity Fund (“TPOF” or the “Fund”). The Fund is to be used by the Governor to encourage the development of transportation projects through the design-build provisions of § 33.1-12(2)(b) of the Code of Virginia (the “Code”) and pursuant to the Public-Private Transportation Act of 1995 (§ 56-556 *et seq.* of the Code) (the “PPTA”). The Governor may also use the Fund to provide monies to address the transportation aspects of economic development opportunities.

The Act

The Act authorizes monies to be awarded from the Fund by the Governor as grants, revolving loans, or other financial tools and equity contributions to an agency or political subdivision of the Commonwealth of Virginia or to a private entity or operator that has submitted a proposal or that has signed a comprehensive agreement to develop a transportation facility pursuant to applicable provisions of the Code.

It is the intent of the Act to encourage the development of transportation projects through design-build and the PPTA and to provide funds to address the transportation aspects of economic development opportunities, including, but not limited to, the creation of jobs and to promote private investment for economic development projects that may result in the availability of the facilities in a more timely or less costly fashion.

The following guidelines and criteria have been developed by the Commonwealth Transportation Board (the “CTB”), in consultation with the Secretary of Transportation and the Secretary of Commerce and Trade to guide the process of applying for and receiving financial assistance from the Fund.

The complete text of the Act has been included as Appendix A to these guidelines. Although guidance is provided herein with regard to application of the Act, it will be incumbent upon all entities, both public and private, to read the Act in its entirety, and to comply with the provisions of the Act.

Transportation Partnership Opportunity Fund Administration

Monies in the Fund will be awarded by the Governor in the form of grants, revolving loans or other financing tools and equity contributions. Loans from the Fund of up to \$30 million will be interest-free. Loan terms will vary but shall not exceed seven years. The Act also authorizes the Governor to award grants of up to \$5 million.

Assistance or commitments from the Fund will be limited to the total value of money that is available in the Fund. The Fund has been created with an initial capitalization of \$50 million. Repayments to the Fund of loans, any revocation of assistance provided to

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entities that fail to meet performance criteria, any interest and dividends earned on the Fund and any other appropriations may be used for additional loans or grants for other projects.

After award by the Governor, the Fund will be administered by the CTB acting through the Virginia Department of Transportation (“VDOT”), in consultation with the Secretary of Commerce and Trade and the Virginia Economic Development Partnership. VDOT will manage the overall administration of the TPOF, with the Secretary of Commerce and Trade and the Virginia Economic Development Partnership providing guidance with respect to the economic development features of the program.

Eligible Applicants

Financial assistance from the Fund may be awarded to any agency or political subdivision of the Commonwealth of Virginia. In addition, a private entity or operator, as defined in § 56-556 *et seq.* of the Code, which has submitted a proposal or that has executed a comprehensive agreement to develop a transportation facility pursuant to the PPTA is eligible to apply for financial assistance.

Eligible Projects

The financial assistance may be used for transportation capacity development, on and off site; road, rail, mass transit or other transportation access costs beyond the funding capability of existing programs; studies of transportation projects including but not limited to environmental analysis, geotechnical assessment, survey, design and engineering, advance right-of-way acquisition, traffic analysis, toll sensitivity studies, financial analysis, or any other transportation development activity permitted by law. Monies may be used for any mode of transportation project or any mode of transportation facility that may be developed pursuant to § 33.1-12(2)(b) of the Code, the PPTA, Title 33.1 of the Code or other applicable federal, state or local law.

Transportation aspects of economic development projects that are also eligible for funding through the Revenue Sharing Program, the Industrial Road Access Program, the Industrial Rail Access Program, the Rail Preservation Program or the Rail Enhancement Program, may be eligible to receive financial assistance from the Fund. However, it must be demonstrated that such additional funding is necessary. Amounts received from these other funding sources, or used to leverage additional monies from the Fund, may not also be used for the required non-state match.

Monies from the Fund are not to be used to supplant existing or programmed funds from other existing public sources, but are to be used to support projects and activities beyond the funding capability of existing programs.

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Monies from the Fund that are to be used for transportation aspects of an economic development project must meet the economic development criteria of the Governor's Opportunity Fund. Funds used to match the Governor's Opportunity Fund cannot be used to match the TPOF, although both sources of monies can be used for a project. Funds from the Virginia Tobacco Indemnification and Community Revitalization Commission may be allowed as matching funds for this purpose.

Project Ownership

Projects that are developed with monies from the Fund shall not become private property and shall be maintained by the appropriate entity pursuant to applicable agreements following completion. Any reports, studies, analysis, and other forms of intellectual property created or developed using monies from the Fund shall become property of the Commonwealth.

Application Process

VDOT, in cooperation with the Secretary of Commerce and Trade and the Virginia Economic Development Partnership, will accept applications from eligible applicants for consideration. Agencies and political subdivisions of the state may apply at any time. Private entities, on behalf of a specific transportation project may apply on or after the date a proposal is received pursuant to the PPTA process. A copy of the application is provided as Appendix B. All applications for assistance from the Fund shall be sent to VDOT's Chief Financial Officer (the "CFO") and addressed as follows:

Transportation Partnership Opportunity Fund
Attn: Chief Financial Officer
Virginia Department of Transportation
1401 East Broad Street
Richmond, Virginia 23219-2000

All applications will be reviewed to determine that the minimum eligibility requirements have been satisfied. The minimum eligibility requirements are as follows:

Minimum Eligibility Requirements

- The applicant is an agency or political subdivision of the Commonwealth, or a private entity applicant with (i) a PPTA proposal that has been submitted or (ii) a comprehensive agreement that has been signed under the PPTA.
- The project addresses the needs identified in the appropriate state, regional or local transportation plan.
- The project either meets the design-build and/or PPTA requirements, or meets the economic development criteria of the Governor's Opportunity Fund.

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Following an applicant's selection for evaluation, meetings may be conducted with the applicant. The purpose of the meetings will be to review and confirm the information contained in the application. Representatives of the applicant, VDOT staff and staff from the applicable modal oversight agency and the Virginia Economic Development Partnership staff, as appropriate, shall participate in the meetings.

Application Evaluation Criteria

Following receipt of the applications and a review by staff to assure the basic statutory requirements have been met, a TPOF Advisory Panel, consisting of VDOT's Chief Financial Officer, an Executive Officer of the applicable modal oversight agency, a Deputy Secretary of Transportation and a Deputy Secretary of Commerce and Trade, will evaluate those applications to ensure that the applicant(s) meets the transportation and economic development evaluation criteria. Applicants meeting the evaluation criteria become eligible to receive assistance, subject to the availability of funding. In circumstances where the total amount of assistance requested exceeds the total amount of funding available, eligible applications that include applicant matching funds or equity contributions and projects that are in an advanced state of readiness-to-proceed, will receive priority consideration for assistance.

Transportation Evaluation Criteria

- Financial feasibility of the project plan of finance, including the capacity to repay any loan and mitigate major risks.
- The extent to which the project would encourage or include public-private partnerships and attract private debt, equity investment, and/or dedicated revenue sources such as tolls or special taxation revenue or funds from any other local, federal or private source.
- Extent to which funding would advance the project's or facility's schedule to an earlier completion date.
- The entity's experience implementing similar projects, including the use of new technologies.
- Comparative benefits resulting from the development of the proposed transportation project or facility.

Economic Development Evaluation Criteria

- Project must meet minimum criteria established in the Governor's Opportunity Fund Guidelines.

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Advisory Panel Notification

Following evaluation by the TPOF Advisory Panel, the VDOT Chief Financial Officer shall provide findings and recommendations of the Panel to the Secretary of Transportation, the Secretary of Commerce and Trade and the applicable modal oversight board and agencies.

Financing Commitment

Following notification by the TPOF Advisory Panel, the Secretary of Transportation and the Secretary of Commerce and Trade will submit to the Governor a recommendation of funding for the successful applicants. Once assistance from the Fund is approved and awarded by the Governor, a written commitment (the “Financing Commitment”) will be provided to the potential recipient. The commitment will outline the type of assistance to be provided and in the case of a loan, the required security provisions, the loan term and payment provisions, the amount of assistance to be provided and any conditions that must be met by the applicant prior to loan closing or grant award. The commitment must be accepted and signed by the potential recipient and returned to VDOT within thirty (30) days of the commitment date to preserve the funding. The Financing Commitment, once executed, establishes a legal obligation for the funding subject to appropriation and the terms and conditions of the Financing Commitment, as well as the recipient's legal obligation to perform.

Economic Development Transportation Projects

For transportation projects associated with economic development opportunities, a performance agreement shall be executed between the Secretary of Commerce and Trade and the appropriate local government, state agency, political subdivision, or public body corporate and politic and the private entity that receives the principal benefit of financing from the Fund before disbursement of any monies. The performance agreement will include a statement that the recipient will reach the specified job creation and capital investment levels within 30 months after disbursement of funds and maintain those levels at least throughout the 30-month period or until the Commonwealth reaches its “break even” point as established by the return on investment as prepared by the Virginia Economic Development Partnership, whichever is later.

If those performance criteria are not met, the private entity shall repay to the Fund, an amount as required by the terms and conditions of the performance agreement. The CTB may, however, in consultation with the Secretary of Transportation and the Secretary of Commerce and Trade, grant a partial or total waiver to the repayment or extend the performance period if it can be demonstrated that the transportation improvements developed with monies from the Fund had other economic benefits to a locality of the Commonwealth beyond that directly attributable to the private entity which was the basis for an application for monies from the Fund.

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Loan Closing/Grant Award/Financing Agreement

Any conditions or prerequisites to receiving the assistance that are outlined in the Financing Commitment must be met prior to execution of the Financing Agreement. VDOT and the applicant will enter into a financing agreement for the funds. The Financing Agreement will include the security provisions for the assistance, repayment terms along with the amortization schedule, representations and warranties, finance plan requirements, borrower covenants, disbursement requirements, monitoring and reporting requirements and will specify any other terms and conditions for the financial assistance.

Disbursement Process

Disbursement of the financial assistance can begin following execution of a Financing Agreement. Assistance from the Fund may be paid to the recipient based on costs incurred for the project. In some instances, disbursement may be allowed on a lump sum basis, subject to sufficient justification, where a portion, up to the maximum amount of assistance approved, could be disbursed at a single time.

Recipients will submit a disbursement request to VDOT. VDOT will review the request for completeness and if acceptable approve the request for disbursement. VDOT will notify the recipient within 30-days of any deficiencies in any disbursement request. Upon receipt of an approved disbursement request, VDOT will then forward the request to the Virginia Department of the Treasury (the "Treasury") for payment.

Loan Term/Repayment

Loans from the Fund will have their term set by the Governor. Terms and repayment provisions will vary depending on the type of project and the availability of revenues or other funds. All loans must be repaid within 7 years of the date of loan closing. The frequency of payments of principal will vary according to the recipient and will be established as a part of the loan closing process. Loan recipients will make their payments to the Treasury.

VDOT will be responsible for monitoring and ensuring repayment of the loans.

Recipient Reporting Requirements

Recipients of TPOF assistance will be required to provide VDOT and the Secretary of Commerce and Trade with various reports, certificates and documents during the project development phase as well as throughout the life of any loan. Submittals of annual audited and interim, unaudited financial statements, approved budgets and use of funds reporting will be required as a condition of accepting assistance from the Fund. In addition, the recipient shall provide disclosure of any material events that could affect its

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ability to complete and, if applicable, operate the project. Other special reporting requirements may be required on a case-by-case basis. All reporting requirements will be included in the financing agreement. Recipient reports will be due April 1 and October 1 during the term of any outstanding loan or, for grant recipients, until completion of the assisted project. VDOT shall seek to minimize reporting requirements for smaller grants and loans.

Transportation Partnership Opportunity Fund

Appendix A

Chapter 847 of the 2005 Acts of Assembly

CHAPTER 847

An Act to amend the Code of Virginia by adding a section numbered [33.1-221.1:8](#), relating to the Transportation Partnership Opportunity Fund.

[H 2793]

Approved March 26, 2005

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered [33.1-221.1:8](#) as follows:

§ [33.1-221.1:8](#). *Transportation Partnership Opportunity Fund.*

A. There is created the Transportation Partnership Opportunity Fund (the Fund) to be used by the Governor to encourage the development of transportation projects through design-build pursuant to § [33.1-12](#) (2)(b), the Public-Private Transportation Act (§ [56-556](#) et seq.) and to provide funds to address the transportation aspects of economic development opportunities. The Fund shall consist of any funds appropriated to it by the general appropriation act and revenue from any other source, public or private. The Fund shall be established on the books of the Comptroller, and any funds remaining in the Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund. All interest and dividends that are earned on the Fund shall be credited to the Fund. The Governor shall report to the chairmen of the House Committees on Appropriations, Finance, and Transportation and the Senate Committees on Finance and Transportation as funds are awarded in accordance with this section.

B. The Fund shall be a component of the Commonwealth Transportation Fund but not a component or subcomponent of the Transportation Trust Fund or the Highway Maintenance and Operating Fund. Provisions of this title and Title 58.1 relating to the allocations or disbursements of proceeds of the Commonwealth Transportation Fund, the Transportation Trust Fund, or the Highway Maintenance and Operating Fund shall not apply to the Fund.

C. Funds shall be awarded from the Fund by the Governor as grants, revolving loans, or other financing tools and equity contributions to (i) an agency or political subdivision of the Commonwealth or (ii) a private entity or operator which has submitted a proposal or signed a comprehensive agreement to develop a transportation facility pursuant to § [56-556](#) et seq. Loans shall be approved by the Governor and made in accordance with procedures established by the Commonwealth Transportation Board and approved by the Comptroller. Loans shall be interest-free and shall be repaid to the Fund. The Governor may establish the duration of any loan, but such term shall not exceed seven years. The

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Virginia Department of Transportation shall be responsible for monitoring repayment of such loans and reporting the receivables to the Comptroller as required.

D. Grants or revolving loans may be used for transportation capacity development on and off site; road, rail, mass transit, or other transportation access costs beyond the funding capability of existing programs; studies of transportation projects including but not limited to environmental analysis, geotechnical assessment, survey, design and engineering, advance right-of-way acquisition, traffic analysis, toll sensitivity studies, financial analysis, or anything else permitted by law. Funds may be used for any transportation project or any transportation facility. Any transportation infrastructure completed with moneys from the Fund shall not become private property, and the results of any studies or analysis completed as a result of a grant or loan from the Fund shall be property of the Commonwealth.

E. The Commonwealth Transportation Board, in consultation with the Secretary of Transportation and the Secretary of Commerce and Trade, shall develop guidelines and criteria that shall be used in awarding grants or making loans from the Fund; however, no grant shall exceed \$5 million and no loan shall exceed \$30 million. No grant or loan shall be awarded until the Governor has provided copies of the guidelines and criteria to the chairmen of the House Committees on Appropriations, Finance, and Transportation and the Senate Committees on Finance and Transportation. The guidelines and criteria shall include provisions including, but not limited to, the number of jobs and amounts of investment that must be committed in the event moneys are being used for an economic development project, a statement of how the studies and analysis to be completed using moneys from the Fund will advance the development of a transportation facility, a process for the application for and review of grant and loan requests, a timeframe for completion of any work, the comparative benefit resulting from the development of a transportation project, assessment of the ability of the recipient to repay any loan funds, and other criteria as necessary to support the timely development of transportation projects. The criteria shall also include incentives to encourage matching funds from any other local, federal, or private source.

F. Within 30 days of each six-month period ending June 30 and December 31, the Governor shall provide a report to the chairmen of the House Committees on Appropriations, Finance and Transportation and the Senate Committees on Finance and Transportation which shall include, but is not limited to, the following information: the location (county, city, or town) of the project; the amount of the grant or loan made or committed from the Fund and the purpose for which it will be used; the number of jobs created or projected to be created and the amount of a company's investment in the Commonwealth if the project is part of an economic development opportunity.

G. The Governor shall provide grants and commitments from the Fund in an amount not to exceed the total value of the moneys contained in the Fund. If the Governor commits funds for years beyond the fiscal years covered under the existing appropriation act, the State Treasurer shall set aside and reserve the funds the Governor has committed, and the funds set aside and reserved shall remain in the Fund for those future fiscal years. No

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grant or loan shall be payable in the years beyond the existing appropriation act unless the funds are currently available in the Fund.

2. That it is the intent of the General Assembly that the Governor and the chairs of the Transportation Committees of the Senate and House of Delegates, or their respective designees, will facilitate the development of model guidelines to assist in the implementation of this act, that public entities and private sector businesses will be consulted in the development of such guidelines, and that such model guidelines will be completed and made available to public entities covered by this act not later than September 30, 2005.

Appendix B

The Commonwealth of Virginia

The
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Assistance Application

September 2005

THE COMMONWEALTH OF VIRGINIA

All applicants must complete Sections 1 and 2. Private entities may reference the location of material contained in their detailed proposals for the same information requested in Sections 3, 4 and 5.

SECTION 1 – Contact Information

Applicant's Legal Name: _____

Other Names Under Which Applicant Does Business: _____

Federal Tax Identification Number: _____

Business Address: _____

Mailing Address (If different from above): _____

Contact Person Name: _____

Contact Person Title: _____

Contact Person Mailing Address (If different from above): _____

Telephone Number: () _____

Fax Number: () _____

E-mail Address: _____

SECTION 2 – Assistance Requested

Type of Assistance Requested: () Loan () Grant () Other: _____

Amount of Assistance Requested: \$ _____

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SECTION 3 – Project Information

This section requires narrative information and an exhibit. The list below must be included in the application package with responses attached and numbered to correspond to the respective item.

1. **Project Name.** Assign a short name to the project for identification purposes.
2. **Location.** Describe the location of the project, including major intersecting highway and rail routes. Attach a map as Exhibit 1. Include the county or counties that the project will serve.
3. **Project Development Process.** Is this project developed pursuant to design-build or the Public Private Transportation Act or is it to address the transportation aspects of an economic development opportunity? Provide a reference to the PPTA or design-build project and the project's status under the applicable process.
4. **Purpose of TPOF Assistance.** Describe what aspect of the project for which the assistance will be used. Provide a breakdown of the proposed use of the assistance.
5. **Project Description.** Describe the need for the project, its basic design features and what the project is intended to accomplish. Include an assessment of the current condition of all transportation facilities relating to the project. For a construction project, describe the difference in the current project scope as compared to any approved environmental documents or study alternatives. If no environmental assessments or reviews have been completed on the project, provide an explanation and a schedule outlining the steps to comply with the National Environmental Policy Act. Describe how the funds provided will enhance the transportation aspects of economic development opportunities for the local area and the State in general. The description should include, but not be limited to, the number of jobs created as a result of the project and the amounts of investment that will be committed in the event that the funds are being used for an economic development project. Include a statement as to how the studies and analyses to be completed using moneys from the TPOF will advance the development of a transportation facility or project.
6. **Project Schedule.** Provide a timeline that shows the estimated start and completion dates for each major phase or milestone of the project development, construction and/or acquisition. Indicate the applicant's current status with respect to the timeline. Indicate the extent to which TPOF assistance will expedite the schedule or aid in meeting the schedule. List any other critical path issues.
7. **Permits and Approvals.** List all major permits and approvals necessary for construction of the project and the date, or projected date of the applicant's receipt of such permits and approvals. The list should include permits and approvals required under local, regional, state and federal laws and regulations. Indicate when outstanding approvals by the governing entities are expected. Describe the status of

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the environmental review documents. Copies of major permits and approvals will be required upon execution of a financing agreement.

8. **Project Management and Compliance Monitoring Plan.** Include a comprehensive project management and monitoring plan that will assure the project sponsor's ability to deliver the project as planned, fulfill all project commitments and ensure compliance with all terms of the financing agreement, including all applicable regulations and provisions of law.
9. **Maintenance and Operations.** Include a description of the maintenance and operations plan for the project. Include projections of maintenance and operations expenses and the source of payment for these expenses.

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SECTION 4 – Plan of Finance

The following section pertains to the plan of finance for the project. This section also requests narrative information and exhibits.

1. Estimated Project Cost (Uses of Funds). Provide a detailed budget for the project. The budget should include all applicable and anticipated expenses and cost for administrative services, feasibility studies, preliminary engineering and environmental assessments, right-of-way acquisition, vehicle acquisition, construction, construction administration, project management and inspection and other engineering or technical services, contingencies and any other cost categories as may be necessary. All cost estimates should be shown on a year-of-expenditure, cash basis that include any necessary explanations as to assumptions used to determine estimates.
2. Sources of Funds. Provide a table that reflects the amount of funding from each source of funds for the project, including the TPOF funding. Include, as applicable, federal grants and/or loans, state grants and/or loans, local grants and/or loans, private investment and/or equity contributions, bond proceeds, other borrowings and any other sources of funding that will be used for the project. In addition, provide in narrative form the following information for each source of funding. Supplement the narrative with a chart showing the flow of funds.

Description of TPOF Funding:

- The entity requesting the grant or loan.
- If a grant is being requested, discuss when the funding is expected or needed.
- If a loan is being requested, discuss the following:
 - Provide documentation evidencing authorization to commit to loan repayment;
 - The source of repayment for the TPOF loan;
 - If project revenues are the source of repayment, the priority of repayment of the loan with respect to project revenues;
 - If non-project revenues are the source of repayment (e.g. general revenues, appropriations, etc.), the priority of repayment of the loan with respect to borrowing entity's other liabilities;
 - The security features for the loan, including any pledged revenues and collateral;
 - Debt service coverage on the loan.
 - Whether the source of repayment is contingent on the project's completion;
 - Whether the source of repayment is subject to future allocations, appropriation and/or governing body approval; and
 - Proposed payment schedule.

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Description of other governmental grants:

- The specific governmental entity providing the grant.
- The timing for receipt of the grant, including the key steps that must occur in order to receive the grant, such as environmental permits, receipt of other funding, resolutions adopted by the entity, budget appropriations, etc. Provide relevant documentation for those steps that have occurred.
- Any known level of commitment associated with the grant.
- Requirements that will be imposed by the entity on the use of the grant monies or the project.

Description of other loans, debt or other borrowing:

- The lender and legal entity borrowing the money.
- The source of repayment for all other debt and the priority of payment relative to other project borrowing.
- Security features for all other debt, including any pledged revenues and collateral
- Covenants related to the financial or operational performance of the project, such as coverage levels, and the incurrence of additional debt.
- Structure, including the term, amortization and whether the loan will be fixed or variable rate and expected fixed rate or expected spread to specified index for variable rate debt.
- Anticipated credit ratings if funds are to be borrowed through a public debt offering.
- Any credit enhancement or other guarantees.
- The timing for the borrowing or issuance of debt, including the key steps that must occur. Provide relevant documentation for those steps that have occurred.

Description of equity and private investment:

- The entity, or entities, providing the equity or private investment.
- The mechanism(s) for how the investor(s) will be repaid, for example from excess cash flow, periodic scheduled payments, lump-sum payment from additional debt incurred in the future, etc.
- The expected rate of return and justification for the rate of return.
- Any anticipated revenue sharing with any entity.
- The timing for receipt of the investment, including the key steps that must occur in order to receive the funds. Provide relevant documentation for those steps that have occurred.
- Any major conditions or requirements that will be imposed by the investor(s) on the project.

3. Pro Forma Cash Flow. Provide pro forma cash flows, reflecting the flow of funds and showing revenues, all debt repayment, including any loans under the TPOF,

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maintenance and operations expenses and any payments to equity/private investors. Provide a detailed description of assumptions and justification of the assumptions.

4. Risks and Mitigation. Identify the risks to the project completion and the sufficiency of revenues to repay the loan. Samples of these types of risk could include cost escalation, timing of approvals and permits, litigation, and availability of other funding. Identify the mitigation strategies for any acknowledged risks, including any payment and performance guarantees.
5. Provide year-end audited financial statements for the past three years for each project team member and the parent entities.

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SECTION 5 – Applicant Organization Information

This section requests narrative information and exhibits. The list below should be included in the application package with responses attached and numbered to correspond to the applicable item.

1. Describe the applicant's legal framework including past history and ownership structure. Include a copy of the statutory authority under which the entity was created.
2. Describe the legal authority of the applicant to carry out the proposed project activities. This description should include discussion of the applicant's ability to levy taxes, issue debt, charge tolls or other fees and/or receive assistance from the Transportation Partnership Opportunity Fund. Provide documentation in the form of an exhibit as applicable.
3. Identify whether governmental entities, other than the applicant, must approve the submission of the application package, the funding of activities or the carrying out of activities described in the application. Provide documentation in the form of an exhibit as applicable.
4. Describe the applicant's organizational structure and the applicant's relationship to any subsidiaries or affiliates. Include the legal names of key principals and staff and any recent or proposed changes to the organization structure. If applicant is part of a joint venture, identify all partners and each partner's relationship to any subsidiaries or affiliates.
5. Provide an organization chart, in the form of an exhibit, to include the major parties involved in any aspect of the project. Include the major service contractors that have been, or will be, retained for the project.
6. Describe the applicant's prior experience as it relates to carrying out projects similar to that being proposed. Include prior experience in relation to the implementation of any new technology and the success of the use of such technology.
7. Describe any current, threatened, or pending litigation involving the applicant related to permitting, public involvement, environmental irregularities, construction defects, securities fraud, conflict of interest, failure to perform under a state or federal contract, or other charges which may reflect on the applicant's financial position or ability to complete the project.

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Appendix C

Virginia Economic Development Partnership Draft Performance Agreement

This Performance Agreement made and entered this _____ day of _____, 200_, by and between the COUNTY OF ____, VIRGINIA, a municipal corporation, hereinafter called "COUNTY" and _____, a _____ corporation, hereinafter called "COMPANY."

WITNESSETH:

That whereas COUNTY has received a grant of and expects to receive the sum of \$100,000.00 from the Governor's Opportunity Fund through the Virginia Economic Development Partnership for the purpose of inducing Company to locate in the COUNTY OF ____, VIRGINIA, build a facility, and employ a significant number of persons, and

Whereas the COUNTY is willing to provide the funds to Company provided Company meets certain criteria relating to employment projections and capital investment, and

Whereas the COUNTY is required to return all or a portion of the funds so received to the Commonwealth of Virginia if the performance criteria of Company are not met,

Now the parties hereto, in consideration of the foregoing, and the disbursement of funds, hereafter provided, agree as follows:

1. COUNTY will disburse the entire amount of funds provided to it from the Governor's Opportunity Fund, expected to be the sum of \$100,000.00, to Company to be used by Company in the preparation of the site upon which Company shall construct and operate a facility in the COUNTY OF ____, VIRGINIA.

2. Company will construct and operate a facility on the site in the COUNTY OF ____, VIRGINIA, with an investment of at least \$10,000,000.00 in improvements, machinery, and equipment, and will create and maintain 400 jobs at said facility, all over a 30-month time period measured from the date the funds from the Governor's Opportunity Fund are received by Company. For purposes of this Performance Agreement, "maintain" means that the jobs created pursuant to the Grant will continue without interruption from the date of creation through at least the end date of the thirty-month period or until the Commonwealth reaches its "break-even point" as established by the return on investment (ROI) prepared by VEDP, whichever is later. For this purpose, the break-even point is __ months.

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3. If Company does not meet 90 percent of its capital investment and new jobs commitment set forth in paragraph 2 above, Company shall repay to COUNTY that part of the Governor's Opportunity Fund grant that is proportional to the shortfall, as provided by the following example:

The grant of \$100,000.00 is considered to be \$50,000.00 for the capital investment commitment by Company and \$50,000.00 for the employment commitment. If, after 30 months the capital investment of Company is at least \$9,000,000.00 and the number of new jobs created by Company is at least 360, no refund is required. If, after 30 months the capital investment is only \$5,000,000.00, and the new jobs created is 264, the Company shall refund to the COUNTY 50 percent of the fund related to capital investment; i.e., the sum of \$25,000.00 and 33 percent of the fund related to job creation- i.e., the sum of \$16,500.00.

Any refunds by Company to COUNTY hereunder shall be repaid by COUNTY to the Governor's Opportunity Fund.

4. If Company has met 90 percent of the investment and employment goals set forth in paragraph 3 hereof within the 30-month period, then and thereafter Company is no longer obligated to repay any portion of the grant provided to it hereunder.

5. The Company agrees to provide the COUNTY and the Commonwealth whatever documentation may be required to verify the investment and employment figures

Witness the following signatures and seals the day and year first above written.

THE COUNTY OF _____, VIRGINIA

By _____ (Seal)
County Administrator

Commonwealth of Virginia, at large

The day _____, County Administrator of the County of _____, Virginia, appeared before me, a notary public for the State of Virginia, at large, and did acknowledge his signature above fixed all in my state aforesaid.

My commission expires _____.

Given under my hand this _____ day of _____, 200__.

Notary Public

Transportation Partnership Opportunity Fund

Company

By _____

(Seal)

Title

This day _____, of _____, appeared before me, a notary public for the State of Virginia, at large, and did acknowledge his signature above fixed all in my state aforesaid.

My commission expires _____.

Given under my hand this _____ day of _____, 200_.

Notary Public (Seal)

Transportation Partnership Opportunity Fund

Appendix D

Governor's Opportunity Fund Guidelines

Purpose - The Governor's Opportunity Fund provides either grants or loans to localities to assist in the creation of new jobs and investment in accordance with criteria established by legislation.

Project Eligibility - A minimum private investment of \$10 million, creating at least 100 jobs, is required. In localities with a population of 50,000 to 100,000, however, a minimum private investment of \$5 million, creating at least 50 jobs, is required. For localities of less than 50,000 population, a minimum private investment of \$2.5 million creating 25 jobs is required. Central cities or urban cores will be treated for eligibility purposes the same as communities of 50,000 to 100,000 population. The intent of this lower threshold is to reduce the stringency of the requirements for cities with blighted cores. Each locality's identification of its central city/urban core will be reviewed on a case-by-case basis. Criteria such as vacancy and unemployment rates in the immediate area of the proposed site will be considered in the review. In those cases where the project involves job preservation, "jobs saved" will be used to help determine the amount of the grant; however, the project still must meet the minimum job creation listed above. For projects where the average wage of the new jobs is at least twice the prevailing wage, excluding benefits, for that locality or region, the required job creation figures above for that locality may be halved, at the Governor's discretion.

Use - Monies may be used for such things as public and private utility extension or capacity development on and off site; road, rail, or other transportation access costs beyond the funding capability of existing programs; site acquisition; grading, drainage, paving, and any other activity required to prepare a site for construction; construction or build-out of publicly-owned buildings; grants or loans to an Industrial Development Authority, Housing and Redevelopment Authority, or other political subdivision pursuant to its duties or powers; training; or anything else permitted by law. If funds are made available for site development and a party other than the industry creating the employment also benefits from the grant, the locality must demonstrate how that financial benefit will be passed along to the industry.

Grant Requests - Applications should be sent to the Executive Director of the Virginia Economic Development Partnership, using the following format, by the chief appointed official of any county, city, town, or any other political subdivision and include the following information:

- Description of the project
 - company name
 - type of operation (i.e., manufacturing, distribution, etc.)
- Location of project
 - community

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- population
- unemployment rate (current)

- Private investment, including but not limited to the market value of capital leases (within 30 months of a locality receiving a grant payment), or other private investments of capital that add to the local tax revenues. [Opportunity Fund award, other governmental grants, and working capital cannot be included in the investment figure.]

- Jobs created (within 30 months of a locality receiving a grant payment)

- Amount requested

- Use of grant

- Local financial participation - specific new monies to be allocated to project and how those funds will be used

- Average salary level or total yearly payroll of jobs created

- Average prevailing wage for locality or region, as applicable

- Employment impact on current operations in Virginia

- Other public funds that have been or will be expended for the project. (Examples would be training or past public expenditures for road, utility, or site development)

- Affirmation that other sources of funds are unavailable on a timely basis to accomplish the planned use of the Opportunity Fund grant

- Summary statement presenting the importance of the project to the community and why support from the Opportunity Fund is being sought

- If the project for which Opportunity Funds are being requested involves a relocation of a business from one Virginia locality to another, the community applying for the Opportunity Fund grant must officially notify the community from which the business is moving. For such projects, a statement must be included in the Governor's Opportunity Fund application that this notification has taken place.

- Any other current or background information pertinent to the project, that might assist the Governor in making an informed decision based on complete knowledge. Communities are obliged to disclose any information that could reflect negatively on the project.

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Documentation Required by Company (on Company letterhead)

- Documentation from the business that without support from the Opportunity Fund there is a possibility that the project could be located outside of Virginia and that only one site in Virginia is under consideration for the project
- Documentation from the business indicating the number of jobs to be created, payroll/salary level, and the amount to be invested within 30 months of receipt of the grant

The General Assembly has stated its intention that state funds not be used to help a company relocate or expand its operations in one or more Virginia communities when the same company is simultaneously closing facilities in other Virginia communities. Therefore, affirmation that the company is not currently considering being a party to a merger or acquisition which would alter the nature of its corporate entity, as well as affirmation that the proposed project will not result in a closing, loss of jobs, consolidation, or change to any existing operations in Virginia for the next 12 months is required. If a company applying for a Governor's Opportunity Fund grant has existing operations/facilities in Virginia and has closed, downsized, consolidated, or laid off employees within the past 30 months, the community's application may not be approved, or the company may be requested to provide additional assurances regarding the new facilities and jobs.

- The Executive Director of the Virginia Economic Development Partnership may request company financial information for the past three years. Additionally, financial information and evidence of a company's financial stability may be requested before a grant or loan is approved.

Guiding Principles

Grants are made at the discretion of the Governor with the expectation that grants awarded to a locality will result in a favorable decision for Virginia. Grants will only be awarded for basic projects, i.e., projects that would bring additional income into the Commonwealth. Grants will not be made for projects which have been publicly announced prior to the Governor's approval and public announcement of a locality's Governor's Opportunity Fund request.

Localities may now receive more than one GOF grant during a fiscal year. Grants are considered made in the fiscal year in which the Governor approved them and not in the year in which the grant is paid. In order for a locality to receive more than two (2) GOF grants during a fiscal year, it must demonstrate either unemployment rates, poverty levels, or other acceptable indicia of fiscal stress or need significantly higher than the state averages.

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A locality may, however, demonstrate exceptional need for or benefit from a third GOF grant using other acceptable factors besides traditional fiscal stress.

As a minimum, localities are required to match with local funds on at least a dollar-for-dollar basis the amount requested from the Governor's Opportunity Fund. Previously invested local funds, grants or loans from other government sources, and contributions from private interests which benefit from the project's location may not be counted as local match. Local matches may not be spread out over more than five years to be considered. Local enterprise zone incentives may be counted towards the local match where the locality makes actual expenditures within the first five years after the project is announced to benefit the specific project. Grants to the locality from the Tobacco Region Opportunity Fund may be used as up to one-half of the matching funds by localities experiencing fiscal stress, as determined by the Governor in his discretion. For localities experiencing extraordinary fiscal stress, as demonstrated by unemployment rates at least twice the statewide average for six or more consecutive months, the requirement of matching funds can be reduced by up to 50%, or delayed, in the discretion of the Governor.

In determining grant amounts, the following will be considered: employment, investment, area unemployment, community fiscal stress, community commitment, and industry or company growth potential. In no case shall the grant exceed ten percent of the Governor's Opportunity Fund appropriation, except that for projects with an unusually high benefit for the Commonwealth and/or the locality, the Governor may waive this limit on a transactional basis, by increasing it to a maximum of \$3 million per grant. Grants may only be made from current appropriations and may not be committed from anticipated future appropriations.

Upon approval of a Governor's Opportunity Fund grant or loan, neither the locality nor the company shall announce or confirm the proposed project without coordination with the Virginia Economic Development Partnership. It is important to note that both the employment and investment figures used in the application commit the company to reaching these figures within 30 months of receiving a grant. In addition, these figures will be used in the press release when the public announcement is made. If the committed numbers are not used for the public announcement of the project, the grant award is subject to being reduced or withdrawn.

Since the grant is made to the community, the community is required to enter into a performance agreement with the company before receipt of the grant to ensure that the job and investment levels as stated in their application and as agreed to by the company are met. The community will be held responsible for returning the grant monies to the Commonwealth if the performance agreement criteria are not met.

Any questions regarding the preparation of an application should be directed to: John B. Sternlicht, General Counsel and Director of Legislation and Planning, Virginia Economic Development Partnership, P.O. Box 798, Richmond, Virginia 23218-0798.