

1.1 Section 1. **PUBLIC-PRIVATE PARTNERSHIP PILOT PROGRAM.**

1.2 **Subdivision 1. Definitions.** The following definitions apply to this section.

1.3 (a) **Commissioner.** "Commissioner" means the commissioner of transportation.

1.4 (b) **Council.** "Council" means the Metropolitan Council.

1.5 (c) **Joint program office.** "Joint program office" means the Joint Program Office for
1.6 Economic Development and Alternative Finance.

1.7 (d) **Advisory group.** "Advisory group" means a group composed of one
1.8 representative each from: American Council of Engineering Companies, Minnesota
1.9 chapter; American Institute of Architects, Minnesota chapter; Counties Transit
1.10 Improvement Board; Minnesota County Engineers Association; Associated General
1.11 Contractors, Minnesota chapter; and American Federation of State, County, and Municipal
1.12 Employees, Minnesota Council 5.

1.13 (e) **Public-private partnership.** "Public-private partnership" means a contracting
1.14 method where the authorized public body follows a competitive process to select a private
1.15 entity to carry out two or more of the following activities: design, build, finance, operate,
1.16 and maintain a public infrastructure project for a specific number of years.

1.17 **Subd. 2. Creation and duties of office and advisory group.** (a) The commissioner
1.18 and council shall establish the joint program office, consisting of the commissioner,
1.19 a representative of the council, the commissioner of management and budget, the
1.20 commissioner of employment and economic development, and the commissioner of
1.21 administration.

1.22 (b) The joint program office shall request each organization that is part of the
1.23 advisory group to appoint a representative to serve on the advisory group.

1.24 (c) The duty of the joint program office is to administer the public-private partnership
1.25 pilot program, giving due consideration to the advice of the advisory group, as provided
1.26 in this section.

1.27 (d) The duties of the advisory group are to advise the joint program office
1.28 concerning: evaluation of proposed projects; use of procurement authority under this
1.29 section for proposed projects, utilizing any available value for money analyses; and review
1.30 of financial and contractual agreements.

1.31 (e) The office must, before entering into a public-private partnership project, after
1.32 considering advice from the advisory group, find that the project will serve the public
1.33 interest. The joint program office, in making this determination, must consider advantages
1.34 and disadvantages for various stakeholders, including taxpayers, workers, transportation
1.35 and transit providers and operators, transportation and transit users, commercial vehicle

2.1 operators, and the general public, including the impact on the state's economy and the
2.2 project's environmental impacts.

2.3 (f) Except for breach of a confidentiality agreement entered into under subdivision 4,
2.4 paragraph (e), nongovernmental members of the advisory group have no liability related
2.5 to the performance of their duties.

2.6 Subd. 3. **Public-private partnership initiatives.** (a) Utilization of public-private
2.7 partnerships supports the creation and maintenance of a needed, efficient, and safe
2.8 transportation system, along with other needed public infrastructure projects. Contracting
2.9 transportation and other infrastructure projects through public-private partnerships
2.10 recognizes the necessity of developing innovative alternatives to supplement, but not
2.11 replace, traditional options for procurement, funding, and risk management.

2.12 (b) A public-private partnership initiative must take advantage of the expertise and
2.13 experience of public employees and private sector efficiencies in design and construction,
2.14 along with expertise in finance and development, and provide by objective measures a
2.15 better long-term value for the state than could be obtained through traditional procurement
2.16 methods and project funding sources.

2.17 (c) The joint program office may consider and utilize public-private partnership
2.18 procurement methods for a maximum total of three pilot projects. Neither the commissioner
2.19 nor the council may enter into more than two public-private partnerships under this section.

2.20 (d) Notwithstanding Minnesota Statutes, section 160.98, or any other law to the
2.21 contrary, the commissioner or council may consider for use in the pilot program any
2.22 existing public-private partnership mechanism or any proposed mechanism that proves
2.23 the best available option for the state and that is not inconsistent with state law. Funding
2.24 mechanisms the commissioner or council may consider include, but are not limited to, toll
2.25 facilities, BOT facilities, BTO facilities, user fees, scheduled availability payments made
2.26 by the public body based on appropriations made after execution of the public-private
2.27 partnership agreement, joint development agreements, and negotiated exactions. For
2.28 the purposes of this section, toll facilities, BOT facilities, and BTO facilities have the
2.29 meanings given under Minnesota Statutes, section 160.84.

2.30 (e) As part of the pilot program, the commissioner and council shall consult with the
2.31 advisory group and seek input from the Federal Highway Administration and the Federal
2.32 Transit Administration, as appropriate for transportation projects.

2.33 Subd. 4. **Pilot program restrictions and general provisions.** (a) The commissioner
2.34 or council may receive or solicit and evaluate proposals for a public-private partnership
2.35 related to projects for infrastructure of a capital nature, excluding rolling stock. In
2.36 regard to transportation projects, an approved project must not be inconsistent with the

3.1 commissioner's most recent statewide multimodal transportation plan or the council's most
3.2 recent transportation policy plan.

3.3 (b) The joint program office shall consult with the advisory group concerning
3.4 the preparation of requests for proposals, evaluation of proposals for public-private
3.5 partnerships, review of contractual or financial agreements to determine whether program
3.6 requirements are met, and determination as to whether proposed or executed agreements
3.7 serve the public interest.

3.8 (c) The joint program office, together with the advisory group, shall hold regular
3.9 public meetings at times to be established at the initial meeting, but not fewer than four
3.10 times annually. Meetings are subject to Minnesota Statutes, chapter 13D, the Open
3.11 Meeting Law.

3.12 (d) The commissioner or council may, in connection with a public-private
3.13 partnership, enter into a noncompete agreement, but only after determining the agreement
3.14 will not inhibit the state's ability to address ongoing or future infrastructure needs.

3.15 (e) The commissioner or council may, in connection with a public-private
3.16 partnership, enter into a confidentiality agreement that protects the trade secrets of an
3.17 entity submitting a proposal in response to a request for proposals. Trade secret data
3.18 protected by a confidentiality agreement are classified as nonpublic data under Minnesota
3.19 Statutes, section 13.37, subdivision 2.

3.20 (f) The commissioner or council is responsible to the public to complete the
3.21 contractual duties of the private entity in the event the private entity breaches its
3.22 public-private partnership agreement or otherwise fails to fulfill its duties as required by
3.23 law. The commissioner or council may require the private entity to furnish a performance
3.24 bond under subdivision 4, paragraph (a), clause (10).

3.25 (g) A public-private partnership agreement that includes a temporary transfer
3.26 of ownership or control of a road, bridge, or other infrastructure investment to the
3.27 private entity, must include a provision requiring the return of the road, bridge, or other
3.28 infrastructure investment to the state after a specified period of time that may not exceed
3.29 50 years.

3.30 (h) If the commissioner or council enters into a public-private partnership agreement
3.31 that relates to construction of any facility, the agreement must include a provision giving
3.32 contractors, subcontractors, and suppliers of any tier, a means of securing payments due
3.33 for work on the project. For facilities including a toll facility, facility with user fees, BOT
3.34 facility, or BTO facility, security may include a right to file a mechanics lien or other
3.35 security interest on toll revenues or user fee revenues and the lien shall have priority over
3.36 any other indebtedness incurred in connection with the public-private initiative.

4.1 Subd. 5. Project selection and evaluation; selection of proposer. (a) Subject
4.2 to Minnesota Statutes, chapter 16C, the joint program office shall contract with one or
4.3 more consultants to assist the office and advisory group in proposal evaluation. The
4.4 consultant must be selected on a competitive basis, possess expertise and experience in
4.5 public-private partnership project evaluation methodology, such as value for money,
4.6 costs of public-private partnership compared with costs of public project delivery, and
4.7 cost-benefit analysis. The consultant must not have any business affiliation, business
4.8 relationships, or other relationships that create conflict of interest, with proposers
4.9 responding to a solicitation to enter into a public-private partnership agreement.

4.10 (b) The joint program office may select only new, discrete projects for a
4.11 public-private partnership. The joint program office is prohibited from selecting projects
4.12 involving existing infrastructure for a public-private partnership unless the proposed
4.13 project adds capacity to the existing infrastructure.

4.14 (c) No more than one project under this section may involve bundling multiple
4.15 smaller projects into one larger project for a public-private partnership.

4.16 (d) The total cost estimate for a project selected for a public-private partnership
4.17 must not exceed \$500,000,000.

4.18 (e) When soliciting, evaluating, and selecting a project for eligibility to enter into
4.19 a public-private partnership solicitation process and before approving and selecting a
4.20 project, the joint program office must consider, along with the recommendations of the
4.21 advisory group, the following factors:

4.22 (1) the ability of the proposed project to improve safety, reduce congestion, increase
4.23 capacity, and promote economic growth, as demonstrated by quantitative analysis using
4.24 generally accepted quantitative methods;

4.25 (2) the estimated total budget and predicted financial plan for the project and
4.26 likelihood of providing sufficient value in return for the financial cost of the plan;

4.27 (3) the project's proposed conceptual design, operation, and feasibility;

4.28 (4) length and extent of transportation and transit service disruption;

4.29 (5) comments from local citizens and affected jurisdictions;

4.30 (6) benefits and potential detriments to the public; and

4.31 (7) the safety record of the private entity.

4.32 (f) When a project is determined by the joint program office to serve the public
4.33 interest according to the factors listed in subdivision 2, paragraph (e), and the commissioner
4.34 or council is authorized to pursue a project as a public-private partnership, the
4.35 commissioner or council shall solicit competitive proposals as provided under this section.

5.1 (g) If the commissioner or council receives an unsolicited proposal from a private
5.2 entity for a project that is approved by the joint program office and advisory group, the
5.3 commissioner or council shall publish a notice for 12 weeks, continuously on its Web
5.4 site, and at a minimum, weekly in the State Register stating that the commissioner or
5.5 council has received the proposal and will accept, for 120 days after the initial date of
5.6 publication, other proposals for the same project purpose. The commissioner or council
5.7 must provide prospective proposers a request for proposal and selection criteria that satisfy
5.8 the requirements of this section. The private proposer must be selected on a competitive
5.9 basis under this section.

5.10 (h) The private proposer must list all key entities contributing in a material way to
5.11 the proposer's proposal. The key entities may not be replaced by a proposer except for
5.12 good cause and with the written approval of the commissioner or council.

5.13 (i) The successful proposer must be selected through a competitive process. All
5.14 criteria upon which proposals are judged must be expressly set forth in the request for
5.15 proposals and each shall be assigned a numerical weight. The joint program office shall
5.16 not consider criteria other than the criteria set forth in the request for proposals, and all
5.17 weights shall be applied as set forth in the request for proposals. The total cost to the joint
5.18 program office of private financing over the life of the project shall be given the greatest
5.19 weight of all criteria. Additional criteria must include:

5.20 (1) the safety record of the private entity;

5.21 (2) the private entity's qualifications, industry experience, financial capacity and
5.22 past experience and qualifications, industry experience, financial capacity and past
5.23 experience of any members, partners, contractors, designers, or parties offering operation
5.24 or maintenance services for the project to or on behalf of the private entity;

5.25 (3) the financing terms; and

5.26 (4) ability to improve the economic environment for local contractors,
5.27 subcontractors, and workers.

5.28 (j) Unsuccessful proposers who submit responsive proposals in good faith may
5.29 be paid a reasonable stipend. The amount of the stipend must be set by the joint office
5.30 program. In consideration for paying the stipend, the commissioner or council may
5.31 use any ideas or information contained in the proposals for the project or a subsequent
5.32 procurement, without obligation to pay additional compensation to the unsuccessful
5.33 proposer. The commissioner or council may not use ideas and information contained in a
5.34 proposal submitted by an unsuccessful short-list proposer who elects to waive the stipend.

5.35 (k) At least one project undertaken pursuant to this pilot program shall require
5.36 the public owner to pay reasonable stipends to all unsuccessful proposers who submit a

6.1 responsive proposal in good faith. The desirability of stipends shall be evaluated by
6.2 the advisory group.

6.3 Subd. 6. **Public-private partnership agreement.** (a) A public-private partnership
6.4 agreement between the commissioner or the council and a private entity shall, at a
6.5 minimum, specify:

6.6 (1) the planning, acquisition, financing, development, design, construction,
6.7 reconstruction, replacement, improvement, maintenance, management, repair, leasing, or
6.8 operation of the project, as applicable to the entity and objectives of the agreement;

6.9 (2) the term of the public-private agreement;

6.10 (3) the type and duration of property interest, if any, that the private entity will
6.11 have in the project;

6.12 (4) a description of the actions the commissioner or council may take to ensure
6.13 proper maintenance of the project;

6.14 (5) whether user fees or tolls will be collected on the project and the basis by which
6.15 the user fees shall be determined and modified along with identification of the public
6.16 agency that will determine and modify fees;

6.17 (6) compliance with applicable federal, state, and local laws;

6.18 (7) grounds for termination of the public-private agreement by the commissioner
6.19 or council;

6.20 (8) adequate safeguards for the traveling public and residents of the state in event of
6.21 default on the contract;

6.22 (9) the extent and nature of involvement of public employees in the proposed project;

6.23 (10) financial protection for the state, contractors, subcontractors, and workers in the
6.24 event of default by the private entity, which must include an adequate payment guarantee
6.25 from the private entity for any construction performed covering the general contractor and
6.26 subcontractors of all tiers, and payment performance bonds from the general contractor
6.27 that meet the requirements under Minnesota Statutes, sections 574.26 to 574.32;

6.28 (11) procedures for amendment of the agreement;

6.29 (12) review and approval by the commissioner or council of the private entity's plans
6.30 for the development and operation of the project;

6.31 (13) inspection by the commissioner or council of construction and improvements
6.32 to the project;

6.33 (14) maintenance by the private entity of liability and other insurance policies,
6.34 which may include an owner-controlled insurance program where applicable;

6.35 (15) filing of appropriate financial statements by the private entity on a periodic basis;

6.36 (16) filing of traffic reports by the private entity on a periodic basis;

7.1 (17) financing obligations of the commissioner or council and the private entity;

7.2 (18) apportionment of expenses between the commissioner or council and the
7.3 private entity;

7.4 (19) the rights and remedies available to all parties to the agreement as well as to
7.5 contractors, subcontractors, and vendors of any tier, in the event of a default or delay;

7.6 (20) the rights and duties of the private entity, the commissioner, or council, and
7.7 other state or local governmental entities with respect to the use of the project;

7.8 (21) any negotiated terms and conditions of indemnification of any party to the
7.9 agreement;

7.10 (22) assignment, subcontracting, or other delegations of responsibilities of: (i)
7.11 the private entity, or (ii) the commissioner or council under agreement to third parties,
7.12 including other private entities or state agencies;

7.13 (23) provisions and security that ensure that the contractors, professional designers,
7.14 and subcontractors and subconsultants of all tiers either: (i) shall be paid for work properly
7.15 performed for the private entity regardless of whether the private entity receives income
7.16 on the project of any kind, including, without limitation, tolls, user fees, or availability
7.17 payments; or (ii) agree to be paid through a revenue-sharing arrangement with the private
7.18 entity;

7.19 (24) if applicable, sale or lease to the private entity of private property related to
7.20 the project; and

7.21 (25) traffic enforcement and other policing issues.

7.22 (b) The agreement must provide that any specification listed in paragraph (a) that is
7.23 not included in the agreement was considered and agreed by the parties to be inapplicable
7.24 to the project.

7.25 (c) An agreement under this section is not subject to Minnesota Statutes, section
7.26 160.85, subdivision 3.

7.27 Subd. 7. **Funding.** (a) The commissioner or council may accept from the United
7.28 States or any of its agencies funds that are available to the state for carrying out the pilot
7.29 program, whether the funds are available by grant, loan, the Transportation Infrastructure
7.30 Finance and Innovation Act (TIFIA), or other financial assistance. The commissioner or
7.31 council may make availability payments from these sources and any other available sources.

7.32 (b) The commissioner or council may enter into agreements or other arrangements
7.33 with the United States or any of its agencies as necessary for carrying out the pilot program.

7.34 (c) The commissioner or council shall seek to maximize project funding from
7.35 nonstate sources and may combine federal, state, local, and private funds to finance a
7.36 public-private partnership pilot project.

8.1 Subd. 8. **Reporting.** By August 1, 2016, and annually by August 1 thereafter until
8.2 all agreements entered into under this section are expired or terminated, the commissioner
8.3 and council shall submit to the chairs and ranking minority members of the senate and
8.4 house of representatives committees having jurisdiction over transportation policy and
8.5 finance a list of all agreements executed under the pilot program authority. The list must
8.6 identify each agreement, the contracting entities, contract amount and duration, any
8.7 repayment requirements, and provide an update on the project's progress. The list may be
8.8 submitted electronically and is subject to Minnesota Statutes, section 3.195, subdivision 1.

8.9 Subd. 9. **Expiration of authority.** The authority to enter into new agreements
8.10 under this section expires on June 30, 2019.

8.11 **EFFECTIVE DATE.** This section is effective July 1, 2016.