

SPOTSYLVANIA COUNTY GUIDELINES – PUBLIC-PRIVATE TRANSPORTATION ACT

I. INTRODUCTION

The Public-Private Transportation Act of 1995, Va. Code Ann. §§ 33.2-1800, et seq. (the “PPTA”) as amended, grants responsible public entities the authority to create public-private partnerships for the development of transportation facilities for public use (“qualifying transportation facilities”) if the public entity determines that it serves the best interest of the public.

The PPTA defines “responsible public entity” to include local governments that have the power to develop and/or operate the qualifying transportation facility. Spotsylvania County (“County”) is a local government with the authority to develop and/or operate qualifying transportation facilities in Spotsylvania County, and therefore is a “responsible public entity” as that term is used in the PPTA.

The PPTA provides that a responsible public entity shall not proceed to consider any proposal by a private entity for approval of a qualifying transportation facility until the responsible public entity has adopted and made publicly available guidelines that are sufficient to establish the process for acceptance and review of proposals. Accordingly, these Guidelines are established by the Spotsylvania County Board of Supervisors.

The PPTA authorizes public-private partnerships to develop qualifying transportation facilities, as defined below.

II. DEFINITIONS

“Affected locality or public entity” 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.

“Commission” means the State Corporation Commission.

“Comprehensive agreement” means the comprehensive agreement between the private entity and the responsible public entity required by Virginia Code § 33.2-1808.

“Concession” 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 will 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.

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“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.

“County” means Spotsylvania County and relative to “decisions made by the County”, the term “County” shall also mean at the direction of the County Administrator or designees, unless otherwise specified herein.

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

“Highway” means the entire width between the boundary lines of every way or place open to the use of the public for purposes of vehicular travel in the Commonwealth, pursuant to Virginia Code § 33.2-100.

“Interim agreement” 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.

“Material default” means any default by the private entity in the performance of its duties under subsection E of Virginia Code § 33.2-1807 that jeopardizes adequate service to the public from a qualifying transportation facility and remains unremedied after the responsible public entity has provided notice to the private entity and a reasonable cure period has elapsed.

“Multimodal transportation facility” means a transportation facility consisting of multiple modes of transportation.

“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, nonprofit entity, or other business entity.

“Public entity” means the Commonwealth and any agency or authority thereof; any county, city, or town; and any other political subdivision of any of the foregoing, but does not include any public service company.

“Qualifying transportation facility” means one or more transportation facilities developed and/or operated by a private entity pursuant to this chapter.

“Responsible public entity” means a public entity, including local governments and regional authorities, that has the power to develop and/or operate the qualifying transportation facility.

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“Revenues” means all revenues, including income; earnings; user fees; lease payments; allocations; federal, state, regional, and local appropriations or the appropriations or other funds available to any political subdivision, authority, or instrumentality thereof; bond proceeds; equity investments, service payments, or any combination thereof arising out of or in connection with supporting the development and/or operation of a qualifying transportation facility, including 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.

“Road” or “Roadway” means that portion of a highway improved, designed, or ordinarily used for vehicular travel. A highway may include two or more roadways, if divided by a physical barrier or barriers or unpaved areas, pursuant to Virginia Code § 33.2-100.

“Service contract” means a contract entered into between a public entity and the private entity pursuant to Virginia Code § 33.2-1804.

“Service payments” means payments to the private entity in connection with the development and/or operation of a qualifying transportation facility 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; however, “transportation facility” does not include a commercial or retail use or enterprise not essential to the transportation of persons or goods.

“User fees” mean the rates, tolls, fees, or other charges imposed by the private entity for use of all or a portion of a qualifying transportation facility pursuant to the interim or comprehensive agreement.

III. GENERAL PROVISIONS

A. Proposal Submission

1. A proposal to provide a qualifying transportation facility to a responsible public entity may be either solicited from private entities by the public entity (a “Solicited Proposal”) or delivered to the public entity by a private entity on an unsolicited basis (an “Unsolicited Proposal”). Proposers must follow a two-part proposal submission process consisting of an initial conceptual phase and a detailed phase. The initial phase of the proposal should contain specified information on proposer qualifications and experience, project characteristics, project financing, anticipated public support or opposition, or both, and project

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- benefit and compatibility. The detailed proposal should contain specified deliverables. In either case, any such proposal shall be clearly identified as a “PPTA Proposal.”
2. The requirements for any particular Solicited Bid/Proposal shall be as specified in the solicitation by the County for that particular proposal and shall be consistent with all applicable provisions of the PPTA.
 3. Any Unsolicited Proposal shall be submitted to the County by delivering one (1) original and nine (9) complete copies and one electronic copy on Compact Disc (“CD”) or other electronic storage device, together with the required initial review fee as provided below in Section IV (C), to the Spotsylvania County Procurement Division, 8800 Courthouse Road, Room 414, Spotsylvania, VA 22551. The proposal shall be in the format as set forth below in Section V (A) of these Guidelines. The County reserves the right to request additional copies from the private entity. Other requirements for an Unsolicited Proposal are as set forth below in Section IV. A working group shall be designated by the County Administrator or designee to review and evaluate all Unsolicited Proposals. The County may also employ outside advisors and consultants to assist in the review of proposals.
 4. The County may require that any proposal be clarified. Such clarification may include but is not limited to submission of additional documentation, responses to specific questions, and interviews with potential project participants.
 5. Proposals should be prepared simply and economically, providing a concise description of the proposer’s capabilities to complete the qualifying transportation facility and the benefits to be derived from the project by Spotsylvania County including person throughput, congestion mitigation, safety, economic development, environmental quality, and land use. Project benefits to be considered are those occurring during the construction, renovation, expansion or improvement phase and during the life cycle of the project. Proposals also should include a scope of work and a financial plan for the project, containing enough detail to allow an analysis by the County of the financial feasibility of the proposed project. The cost analysis of a proposal should not be linked solely to the financing plan, as the County may determine to finance the project through other available means.
 6. Private entities may propose innovative financing methods, including the imposition of user fees or service payments under the provision of the PPTA. Financing arrangement may include the issuance of debt, equity, or other securities or obligations. A private entity may enter into sale and lease back transactions and secure any financing with a pledge of security interest in, or lien

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on, any or all of its property, including all of its property interests in the qualifying transportation facility.

B. Reservation of Rights

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

1. Reject any or all proposals at any time, for any reason, solely within the discretion of the County. Private entities shall have no recourse against the County for such rejection. A private entity will be notified in writing of such rejection in accordance with these procedures.
2. Terminate evaluation of any and all proposals at any time.
3. Suspend, discontinue and/or terminate the Interim Agreement or Comprehensive Agreement negotiations.
4. Negotiate with a private entity without being bound by any provision in its proposal.
5. Request or obtain additional information about any proposal.
6. Issue addenda to and/or cancel any Request for Proposals (“RFP”) or Invitation for Bids (“IFB”).
7. Revise, supplement or withdraw all or any part of these procedures at any time.
8. Modify any standard fee schedule as stated herein for a specific proposal or for all future proposals.
9. Decline to return any and all fees required to be paid by a private entity hereunder, except for initial fees paid by proposers with an Unsolicited Conceptual Proposal where the County declines to accept the proposal for consideration.
10. Request revisions to Conceptual or Detailed Proposals.
11. Treat any proposal which may have certain characteristics in common yet differ in meaningful ways from a previously received proposal as either a competing proposal or a noncompeting Unsolicited Proposal and proceed accordingly.

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12. Submit a proposal for review by outside consultants or advisors selected by the County without notice to the proposer. Such consultants or advisors shall be advised of and contractually required to agree to maintain the confidentiality of information that has been designated as confidential pursuant to an agreement between the County and the proposer, and to refer all requests for such information to the County.
13. Modify the stated timeline for consideration, review or negotiation of proposals when deemed necessary by the County in its sole discretion. Written notice will be provided to any affected proposers when such departures from a stated timeline are deemed significant

Under no circumstances shall the County be liable for, or reimburse, the costs incurred by private entities, whether or not selected for negotiations, in developing proposals or in negotiating agreements. Any and all information the County makes available to proposers shall be as a convenience to the proposer and without representation or warranty of any kind. Proposers may not rely upon any oral responses to inquiries. If a proposer has a question regarding application of these procedures, the proposer must submit the question in writing to the County Procurement Manager and the County will respond in writing as it determines appropriate.

C. Affected Locality or public entity

1. Any private entity requesting approval from or submitting a conceptual or detailed proposal to the County as the responsible public entity for a qualifying transportation facility must provide any other affected locality or public entity with a copy of the proposal by certified mail, express delivery, or hand delivery within five (5) business days of submission of the proposal to the County. The private entity is responsible for documenting and providing proof of delivery to the County, including but not limited to certified mail with return receipt requested, of the request or proposal. Any such other affected locality or public entity shall have sixty (60) days from the date it receives its copy of the proposal to submit written comments to the County and to indicate whether the proposed qualifying transportation facility is compatible with the (i) local comprehensive plan, (ii) local infrastructure development plans, or (iii) capital improvements budget, or other government spending plan. The County will consider comments received within the 60-day period in evaluating the request or proposal; however, no inferences shall be drawn from the absence of comment by an affected locality or public entity. The County may begin or continue its evaluation of any such proposal during the 60-day period for the receipt of comments from affected locality or public entity.

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2. In addition, in the case where the qualifying transportation facility is a highway or bridge, a copy of the proposal should be delivered to the Commonwealth Transportation Board on the same day it delivers the proposal to the County. The Board will be asked to provide written comments to the County within sixty (60) days or receipt of such proposal.

D. Multiple public entities

In accordance with the provisions in Virginia Code § 33.2-1810

1. If a private entity submits a proposal pursuant to subsection A of Virginia Code § 33.2-1803 to develop and/or operate a qualifying transportation facility or a multimodal transportation facility that may require approval by more than one public entity, representatives of each of the affected public entities shall, prior to acceptance of such proposal, convene and determine which public entity shall serve as the coordinating responsible public entity. Such determination shall occur within 60 days of the receipt of a proposal by the respective public entities.
2. If public entities request proposals from private entities for the development and/or operation of a qualifying transportation facility or a multimodal transportation facility pursuant to subsection B of Virginia Code § 33.2-1803, the determination of which public entity shall serve as the coordinating responsible public entity shall be made prior to any request for proposals.
3. Once a determination has been made in accordance with subsection 1 or 2, the coordinating responsible public entity and the private entity shall proceed in accordance with this policy.

E. Multiple private entities

In connection with any proposal, pursuant to subsection G of Virginia Code § 33.2-1808, the responsible public entity may enter into a comprehensive agreement with multiple private entities if the responsible public entity determines in writing that it is in the public interest to do so.

F. Virginia Freedom of Information Act

All proposals submitted to the County become the property of the County and are subject to the Virginia Freedom of Information Act (“FOIA”) (Virginia Code § 2.2-3700 et seq.). Proposers shall familiarize themselves with FOIA to ensure that documents identified as confidential or proprietary will not be subject to disclosure under FOIA.

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In accordance with Virginia Code § 2.2-3705.6(11) of the FOIA, proposals and records voluntarily submitted to the County under the PPTA are subject to disclosure except to the extent that they relate to (i) confidential proprietary records submitted to the County under a promise of confidentiality, or (ii) memoranda, working papers, or other records related to proposals if making public such records would adversely affect the financial interest of the County or private entity or the bargaining position of either party.

Virginia Code §§ 33.2-1803 and 1820 of the PPTA requires the County to take appropriate action to protect confidential proprietary information submitted by a private entity. In order for confidential proprietary information to be excluded from disclosure under FOIA, the private entity must (i) invoke the exclusion when the data or materials for which protection from disclosure is sought are submitted to the County, (ii) identify the data or other materials for which protection from disclosure is sought, and (iii) state the reasons why exclusion from disclosure is necessary. The County is authorized and obligated to protect only confidential proprietary information, if it is properly invoked by the private entity and the private entity complies with the requirements above. Thus, the County will not protect any portion of a proposal from disclosure if the entire proposal has been designated confidential by the proposer without reasonably differentiating between proprietary and non-proprietary information contained herein.

Upon timely receipt of a request that designated portions of a proposal be protected from disclosure as confidential and proprietary, the County shall determine whether such protection is appropriate under applicable law and, if appropriate, the scope of such appropriate protection, and shall communicate its determination to the proposer. Upon a final determination by the County to accord less protection than requested by the proposer, the proposer will be accorded an opportunity to withdraw its proposal. A proposal so withdrawn will be treated in the same manner as a proposal not accepted for publication and conceptual-phase consideration as provided below.

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 County shall make the procurement records available upon request in accordance with Virginia Code § 2.2-4342 of the Code of Virginia. Procurement records shall not be interpreted to include (1) proprietary, commercial or financial information, balance sheets, financial statements, or trade secrets that may be provided by the private entity as evidence of its qualifications; and (2) certain confidential and proprietary information, and related records may remain confidential if the financial interest of the County or the private entity would be adversely affected, if the private entity has taken the necessary steps to protect its information as stated above.

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

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G. Use of Public Funds

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

H. Public Sector Analysis and Competition

For any transportation facility under consideration, in accordance with Virginia Code § 33.2-1803.1:1, the County shall ensure competition throughout the procurement process by developing a public sector option which shall identify a maximum public contribution.

The County shall undertake a public sector analysis of the cost for the County to develop the transportation facility under consideration. The analysis should at least contain:

1. Mitigation of risk of user-fee financing through assumptions related to competing facilities, compensation for high usage of the facility by high occupancy vehicles, or other considerations that may mitigate the risk of user-fee financing.
2. Whether the public sector option is based on the transfer of maintenance and operation responsibilities to the private sector.
3. Public contribution that would still be needed to cover necessary costs of development and/or operation of the transportation facility in excess of available financing.
4. Funds provided to support nonuser fee generating components of the project that contribute to the expected benefits of the transportation facility.

I. Applicability of Other Laws

Nothing in the PPTA shall affect the duty of the County or the private entity to comply with all other applicable laws not in conflict with the PPTA. The applicability of the Virginia Public Procurement Act (the “VPPA”) is as set forth in the PPTA.

J. Service Contracts

Pursuant to Virginia Code § 33.2-1804, the public entity may contract with a private entity for transportation services to be provided by a qualifying transportation facility in exchange for such service payments and other consideration as such public entity may deem appropriate.

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III. SOLICITED PROPOSALS

The County may request proposals from private entities for the development and/or operation of transportation facilities provided that a finding of public interest has been issued pursuant to Virginia Code § 33.2-1803.1.

The procedures applicable to any particular Solicited Proposal shall be specified in the solicitation for that proposal and shall be consistent with the requirements of the PPTA and any other applicable law. All such solicitations shall be by issuance of a written Request for Proposal (“RFP”) within the meaning of that term as used in the Spotsylvania County Procurement Policy. The County may use a two-part proposal process consisting of an initial conceptual stage (part 1) and a detailed stage (part 2). In such case, the County shall set forth in the RFP the format and supporting information that is required to be submitted, consistent with the provisions of the PPTA.

The RFP must specify any information and documents required by the County and the factors that will be used in evaluating proposals. Pre-proposal conferences may be held as deemed appropriate by the County.

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

The County may also issue a Request for Information (RFI) inviting private entities to express a potential interest in developing and/or operating one or more qualifying transportation facilities. The issuance of a RFI does not require the County to issue a Solicited Proposal for the same project. The County will not accept unsolicited proposals for a project that is the subject of some, or all of a RFI, until the County makes a determination to accept unsolicited proposals. No fees shall be charged for the processing, reviewing, or evaluating an expression of interest.

Finding of public interest

1. Prior to the initiation of a procurement pursuant this section the County Administrator shall make a finding of public interest, when any state agency is involved, in accordance with Virginia Code § 33.2-1803.1. At minimum the finding of public interest shall include the following information:

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- a. A description of the benefits expected to be realized through the use of this section compared with the development and/or operation of the transportation facility through other options available to the County.
- b. A discussion of whether revenue risk will be transferred to the private entity and the degree to which any such transfer may be mitigated through other provisions in the interim or comprehensive agreements;
- c. A description of the risks, liabilities, and responsibilities to be retained by the responsible public entity;
- d. The determination of whether the project has a high, medium, or low level of project delivery risk and a description of how such determination was made. If the qualifying transportation facility is determined to contain high risk, a description of how the public's interest will be protected through the transfer, assignment, or assumption of risks or responsibilities by the private entity in the event that issues arise with the development and/or operation of the qualifying transportation facility;
- e. If the County proposes to enter into an interim or comprehensive agreement, information and the rationale demonstrating that proceeding in this manner is more beneficial than proceeding pursuant to other options.
- f. Other items determined appropriate by the County.

IV. UNSOLICITED PROPOSALS

The County may receive unsolicited proposals at any time pursuant to these Guidelines. Additionally, the County may publicize its needs and encourage interested parties to submit unsolicited proposals subject to the terms and conditions of the PPTA. When such proposals are received without issuance of an RFP, the proposal shall be treated as an unsolicited proposal under the Act. Unsolicited Proposals shall be submitted to the County Procurement Division.

The process for evaluating an Unsolicited Proposal, which is described in detail below, consists of four steps.

1. Upon receipt of an Unsolicited Proposal the County's first step will be to determine whether to accept it for consideration at the conceptual stage.
2. If the County determines it will accept it for consideration, then the County will give public notice of the Unsolicited Proposal.

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3. Next, the County will proceed with a review at the conceptual stage of the original Unsolicited Proposal, along with any other proposals received in response to the public notice and accepted for consideration at the conceptual stage.
4. Finally, the County will conduct an in-depth review at the detailed stage of the initial Unsolicited Proposal received, and/or any other proposals received in response to the public notice and accepted for consideration, at the detailed stage. However, the County may discontinue its evaluation of any proposal, however received, at any time.

The County Administrator, or designee, shall engage the services of qualified consultants, which may include an architect, engineer, certified public accountant, or other consultant(s) not otherwise employed by the County, 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 transportation facility unless the County Administrator, or designee, determines that such analysis of a request by the County for approval of a qualifying transportation facility shall be performed by an employee of the County.

A. Decision to Accept and Consider Unsolicited Proposal; Notice

1. The County reserves the right to reject any and all proposals at any time.
2. Upon receipt from a private entity of any Unsolicited Proposal accompanied by payment of any required fees, the County will determine whether to accept the Unsolicited Proposal for publication and conceptual-phase consideration, as described below. The County may only accept an Unsolicited Proposal if the proposal meets the format required, the review fee is submitted, and the proposed qualifying transportation facility serves the best interest of the public. A qualifying transportation facility serves the best interest of the public if the private entity can develop the transportation facility with a public contribution amount that is less than the maximum public contribution, if there is a need for the transportation facility the private entity proposes, if the proposed transportation facility is reasonable and will address the needs of the regional or local transportation plan by improving safety, reducing congestion, increasing capacity, and/or enhancing economic efficiency, if the plan for the development of the transportation facility is anticipated to have significant benefits, and if the private entity's plans will result in the timely development and/or operation or more efficient operation. The County Administrator shall reject any proposal not meeting the above requirements and return the review fee to the private entity.
3. If the County chooses to accept an Unsolicited Proposal for conceptual-phase consideration, it shall give public notice of the proposal in accordance with the PPTA and shall specify a period of time not less than one hundred twenty (120)

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days during which it will receive competing Unsolicited Proposals. During the 120-day period for receiving competing Unsolicited Proposals, the County may continue to evaluate the original Unsolicited Proposal. The County shall provide for more than 120 days in situations where the County deems that scope or complexity of the original proposal warrants additional time for potential competitors to prepare proposals.

The notice shall state that the County (i) has received an unsolicited proposal under the PPTA, (ii) intends to evaluate the proposal, (iii) may negotiate an interim or comprehensive agreement with the proposer based on the proposal, and (iv) will accept for simultaneous consideration any competing proposals that comply with Spotsylvania County's adopted PPTA guidelines. The notice will include specific information regarding the proposed nature, timing, and scope of the proposed qualifying transportation facility project or projects, identify their proposed location(s), and outline the opportunities for public comment during the review process. Copies of unsolicited proposals shall be available upon request, subject to the provisions of FOIA and Virginia Code §§ 33.2-1803 and 1820 of the PPTA.

Prior to posting of the notices provided for in this subsection, the County shall receive from the initial proposer the balance due, if any, of the required project proposal review fee.

The County recognizes that it may receive proposals which have certain characteristics in common yet differ in meaningful ways. In such case, the County reserves the right, in its sole discretion, to treat such a proposal or any portion of such proposal received after the original proposal, as either a competing proposal or a non-competing unsolicited proposal, and to proceed accordingly under these procedures.

Because of the consequences to a proposer for failing to submit within the designated period a proposal which the County could later deem a competing proposal, prospective proposers are strongly urged to monitor the County notices of proposals received, and to be prepared to submit within such designated period if they perceive that a proposal they are considering or are preparing bears certain similarities to, or has characteristics in common with, a proposal which is the subject of a notice.

In the event a proposer is unsure whether its planned proposal will be sufficiently similar to the proposal which was the subject of a notice to be deemed a competing proposal, such proposer may submit to the County a written request for a preliminary determination of whether its project would be deemed a competing proposal in whole or in part. The County will endeavor, no later than twenty-one

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(21) days thereafter, to respond to such request with a preliminary determination as to whether or not the proposal would be a competing proposal or that it has received insufficient information to make a determination. In the event the County elects to treat a proposal, or part of a proposal, received within the designated period as a non-competing proposal, the County will follow the above notice procedure to permit competing proposals to be submitted, including from the proposer whose proposal triggered the original notice.

If state or federal funds are anticipated in any proposal, the County may also notify the appropriate state or federal agencies and will require that the proposer provide additional copies of the proposal to be given to those agencies.

B. Posting Requirements

1. Conceptual proposals, whether solicited or unsolicited, shall be posted by the County on the Procurement Division website within ten (10) working days after acceptance of such proposals.
2. In addition to the posting requirements, at least one copy of the proposals shall be made available for public inspection. Trade secrets, financial records, or other records of the private entity excluded from disclosure under the provisions of subdivision 11 of Virginia Code § 2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the County and the private entity, if properly invoked by the private entity and the private entity complies with the requirements stated in the Virginia Code. Any inspection of procurement transaction records shall be subject to reasonable restrictions to ensure the security and integrity of the records.

C. Proposal Review Fees

1. No fee will be charged to process, review or evaluate any solicited proposal submitted under the PPTA.
2. A review fee will be charged to a private entity submitting an Unsolicited Proposal to the County, to cover the County's costs of processing, reviewing, and evaluating any proposal or competing unsolicited proposal. Such costs include but are not limited to County staff time, the cost of any materials or supplies expended, and the cost of any outside advisors or consultants, including but not limited to attorneys, consultants, financial and technical advisors, used by the County in its sole discretion to assist in processing, reviewing, or evaluating the proposal. Such fees generally shall be in the amount necessary to completely cover all of the County's costs.

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3. For unsolicited proposals and competing proposals, review fees shall be imposed based on the reasonably anticipated costs to the County in accordance with the following schedule:
 - a. Initial fee. Payment of an initial fee must accompany the submission of the Unsolicited Proposal to the County in order for the County to proceed with its review. The fee shall be paid in the form of a check, payable to “Spotsylvania County Treasurer”. The initial fee shall be two and one-half percent (2.5%) of the reasonably anticipated total cost of the implementing the proposal, but shall be no less than \$5,000 nor more than \$50,000, regardless of the anticipated total cost. For purposes of initial processing of the proposal, the County may accept the \$5,000 minimum fee with the balance to be due and payable prior to proceeding beyond the initial review stage. If the County chooses to proceed with evaluation of the proposal(s) under the PPTA, it shall not do so until the entire proposal fee has been paid in full. The County Administrator is authorized to refund all or part of the proposal review fees to all proposers during the initial consideration or detailed review phases.
 - b. Additional fees. Additional fees, as determined by and in the discretion of the County Administrator, shall be imposed on and paid by the private entity throughout the processing, review, and evaluation of the Unsolicited Proposal if and as the County reasonably anticipates incurring costs in excess of the initial fee paid by the private entity. The County Administrator shall document the costs related to the additional fees in writing. The County will notify the private entity of the amount of such additional fees as and when it anticipates incurring such costs. Prompt payment of such additional fees is required before the County will continue to process, review, and evaluate the proposal.

D. Initial Review at the Conceptual Stage

1. Only proposals complying with the requirements of the PPTA and these Guidelines that contain sufficient information for a meaningful evaluation and that are provided in an appropriate format, as described below, will be considered by the County for further review at the conceptual stage.
2. The County will determine at this initial stage of review whether it will proceed by:
 - a. procurement through competitive sealed bidding, as defined in the Spotsylvania County Procurement Policy; or

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- b. Procedures for other than professional services by competitive negotiation as defined in the Spotsylvania County Procurement Policy.
3. After reviewing an Unsolicited Proposal and any competing Unsolicited Proposals submitted during the notice period, the County may determine (a) not to proceed further with any proposal, (b) to proceed to the detailed phase of review with the original proposal, (c) to proceed to the detailed phase with a competing proposal, or (d) to proceed to the detailed phase with multiple proposals. The County at all times retains the right to reject any proposal at any time for any reason whatsoever.

V. PROPOSAL PREPARATION AND SUBMISSION

A. Format for Submissions at the Conceptual Stage (Part 1)

Unsolicited Proposals at the conceptual stage shall contain the following information in the following format, plus such additional information as the County may request subsequent to receipt of the unsolicited proposal:

One (1) original (marked “ORIGINAL”) and nine (9) copies, and one electronic copy on CD of the proposal must be submitted. Each copy shall be bound in a single volume where practical, except that information for which a claim of confidential or proprietary information is made should be submitted in a separately bound document or volume for convenience of review by the County. Any such volume containing confidential or proprietary information shall be clearly marked on its cover. The proposal should contain a table of contents, which cross references the requirements by category. Each proposal shall be structured so that it contains individual tabs/sections detailing proposed services. Proposals should be prepared as simply as possible, with straightforward, concise descriptions of the proposer’s capabilities to satisfy the requirements of the proposed offering. Proposers shall submit their proposals with the required information in the order listed below.

Proposal submitted shall meet standards of professional writing established for the type of report or written material provided, shall be thoroughly researched for accuracy of content, shall be grammatically correct and not contain spelling errors and shall be submitted in a format outlined herein. Whenever possible, proposals submitted shall comply with the following guidelines:

- The proposal shall be limited to a page size of 8 ½” x 11”, single space and type size shall not be less than 12 point font for each response item;
- Double-sided is encouraged;
- Numbered tabs and dividers are required for each of the sections listed and in the order below:

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- I. INTRODUCTION OF ENTITY/FIRM
- II. PROJECT CHARACTERISTICS
- III. PROJECT BENEFIT AND COMPATIBILITY
- IV. QUALIFICATIONS AND EXPERIENCE
- V. PROJECT FINANCING
- VI. REFERENCES
- VII. CONFLICT OF INTEREST STATEMENT

I. INTRODUCTION OF ENTITY (FIRM)

- a. Legal Name of Entity
- b. Address
- c. Tax ID Number (EIN)
- d. Type of Business Entity (i.e. Corporation, General Partnership, Limited Partnership, Unincorporated Association, Limited Liability Company, Sole Proprietorship). Identification number issued to the entity by the sec.
- e. Indication whether or not the Firm or any of its principals are currently debarred from submitting bids to Spotsylvania County, Virginia, or any other state or political subdivision.
- f. Contact Person, and contact information (i.e. telephone number, e-mail address)

II. PROJECT CHARACTERISTICS

- a. Provide a description of the project, including the conceptual design and 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. Include a description of any components, planned initially or for the future, that are expected to generate revenue for the project or the proposer.
- b. Identify and fully describe any work to be performed by the County or any other public entity.
- c. Identify the plans to secure all necessary property, including 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 County to acquire.

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- d. 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.
- e. Identify any anticipated adverse social, economic and environmental impacts of the project. Specify the strategies or actions to mitigate known impacts of the project. Indicate if environmental and archaeological assessments have been completed. Such social and economic impacts should include but are not limited to community benefits, including the economic impact the project will have on the local community in terms of the amount of additional tax revenue to be generated for the County, the number of jobs generated for County residents and level of pay and fringe benefits of such jobs, the training opportunities for apprenticeships and other training programs for County residents generated by the project, and the number and value of subcontracts generated for County subcontractors.
- f. Identify the projected positive social, economic and environmental impacts of the project.
- g. Identify the proposed schedule for the work on the project, including the estimated time for completion.
- h. Identify contingency plans for addressing public needs in the event that all or some of the project is not completed according to projected schedule.
- i. Propose allocation of risk and liability for work completed beyond the agreement's completion date, and assurances for timely completion of the project.
- j. State assumptions related to ownership, legal liability, law enforcement and operation of the project and the existence of any restrictions on the public entity's use of the project.
- k. Provide information relative to phased or partial openings of the proposed project prior to completion of the entire work.
- l. Describe any architectural, building, engineering, or other applicable standards that the proposed project will meet.
- m. List any other assumptions relied on for the project to be successful.
- n. List any contingencies that must occur for the project to be successful.

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- o. A statement of 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, including revenue risk and operations and maintenance.

III. PROJECT BENEFIT AND COMPATIBILITY

- a. Describe the anticipated benefits to the community, region or state, including anticipated benefits to the economic condition of the County, and identify who will benefit from the project and how they will benefit. Such social and economic impacts should include but are not limited to community benefits, including the economic impact the project will have on the local community in terms of the amount of additional tax revenue to be generated for the County, the number of jobs generated for County residents and level of pay and fringe benefits of such jobs, the training opportunities for apprenticeships and other training programs for County residents generated by the project, and the number and value of subcontracts generated for County subcontractors.
- b. Describe the compatibility with the existing and planned transportation system.
- c. Describe how the project will enhance a community-wide transportation system.
- d. Describe how the project addresses the needs of local, regional, and state transportation plans.
- e. Identify how the project will achieve performance, safety, mobility, or transportation demand management.
- f. Identify any anticipated public support or opposition, as well as any anticipated government support or opposition, for the project.
- g. 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.
- h. Describe the compatibility of the project with local, regional, and state economic development efforts.

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- i. Explain the compatibility with the County's comprehensive plan, infrastructure development plans, capital improvements budget, or other government spending plan.

IV. QUALIFICATION AND EXPERIENCE

- a. Identify the legal structure of the firm or consortium of firms making the proposal. Identify the organizational structure for the project, the management approach and how each partner and major subcontractor in the structure fits into the overall team. All members of the proposer's team, including major subcontractors known to the proposer must be identified at the time a proposal is submitted for the Conceptual stage. Identified team members, including major subcontractors (over \$5 million), may not be substituted or replaced once a project is approved and comprehensive agreement executed without the written approval of the County.
- 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. Describe the past safety performance record and current safety capabilities of the firm. Describe the past technical performance history on recent projects of comparable size and complexity, including disclosure of any legal claims of the firm. 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. For each firm or major subcontractor (\$1 million or more) that will be utilized in the project, provide a statement listing all of the firm's prior projects and clients for the past three (3) years with contact information for such clients (names/addresses/ telephone numbers/email). If a firm has worked on more than ten (10) projects during this period, it may limit prior project list to 10, but shall first include all projects similar in scope and size to the proposed project, and second, it shall include as many of its most recent projects as possible. Each firm or major subcontractor shall be required to submit all performance evaluation reports or other documents in its possession evaluating the firm's performance during the preceding three (3) years in terms of cost, quality, schedule, safety and other matters relevant to the successful project development, operation, and completion.

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- d. Provide the names, addresses, email, and telephone numbers of persons within the firm or consortium of firms who may be contacted for further information.
- e. Provide a current or most recently audited financial statement of the firm or firms and each partner with an equity interest of twenty percent (20%) or greater. Submit the most recent Securities and Exchange Commission 10-K and 10-Q reports if applicable.
- f. Identify any persons known to the private entity who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to The Virginia State and Local Government Conflict of Interest Act, Chapter 31 (Virginia Code § 2.2-3100 et seq.) of Title 2.2.
- g. Identify proposed plan for obtaining sufficient numbers of qualified workers in all trades or crafts required for the project.
- h. Provide information on any training programs, including but not limited to apprenticeship programs registered with the U.S. Department of Labor or a State Apprenticeship Council, in place for employees of the firm and employees of any member of a consortium of firms.
- i. For each firm or major subcontractor that will perform construction and/or design activities, provide a sworn certification by an authorized representative of the firm attesting to the fact that the firm is not currently debarred or suspended by any federal, state or local government entity.
- j. Describe worker safety training programs, job-site safety programs, accident prevention programs, written safety and health plans, including incident investigation and reporting procedures.
- k. A completed qualification statement in a form acceptable to the County that reviews all relevant information regarding technical qualifications and capabilities, firm resources and business integrity of the firm or major subcontractors, including but not limited to, bonding capacities, insurance coverage and firm equipment. This statement shall also include a mandatory disclosure by the firm for the past three (3) years, except as indicated, any of the following conduct:
 - 1. bankruptcy filings
 - 2. liquidated damages
 - 3. fines, assessments, or penalties

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4. judgments or awards in contract disputes
5. contract defaults, contract terminations
6. license revocations, suspensions, other disciplinary actions
7. prior debarments or suspensions by a governmental entity
8. denials of prequalification, findings of non-responsibility
9. maximum five years safety performance data
10. “Experience Modification Rating” and issuing insurance company
11. “Recordable Incidence Rates” “Lost Time Incidence Rates”
12. OSHA 200 Summary and OSHA 300A Forms
13. OSHA violations, dates, and disposition
14. violations of any federal, state or local criminal or civil law by the firm or its principals
15. criminal indictments or investigations of the firm or its principals
16. legal claims filed by or against firm

V. PROJECT FINANCING

- a. Provide a preliminary estimate and estimating methodology of the cost of the work by phase, segment, or both.
- b. Submit a plan for the development, financing and operation of the project showing the anticipated schedule on which funds will be required. Describe the anticipated costs of and proposed sources and uses for such funds, including any anticipated debt service costs. The operational plan should include appropriate staffing levels and associated costs. Include any supporting due diligence studies, analyses, or reports.
- c. Include a list and discussion of assumptions underlying all major elements of the plan. Assumptions should include all fees associated with financing given the recommended financing approach. In addition, complete disclosure of interest rate assumptions should be included. Any ongoing operational fees, if applicable, should also be disclosed as well as any assumptions with regard to increases in such fees.
- d. Identify all anticipated risk factors and methods for dealing with these factors. Describe the methods and remedies associated with any financial default.
- e. Identify any local, state or federal resources that the private entity contemplates requesting for the project. Describe the total commitment, if any, expected from governmental sources (and identify each such source) and the timing of any anticipated commitment. Such disclosure should include any direct or indirect guarantees or pledges of the County’s credit or revenue.

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- f. Identify any proposed user fees.
- g. Provide financial information which indices the private entity's financial stability and ability to finance the project.
- h. Include a description and analysis (cost/benefit, tax, etc.) to demonstrate the project's financial feasibility.
- i. Identify the amounts and the terms and conditions for any revenue sources.
- j. Identify any aspect of the project that could disqualify the project from obtaining tax-exempt financing.
- k. Identify any third parties that the private entity contemplates will provide financing for the project and describe the nature and timing of each such commitment.

VI. REFERENCES

Provide the address, telephone number, and the name of a specific contact person for an entity, or entities, for which the firm or consortium of firms, or primary members of the consortium, have completed a similar project or projects. These references should include:

- a. Name and address of project owner/sponsor
- b. Name, telephone number, fax number, and email address of the owner's project manager
- c. A summary of the project including budget and final cost
- d. Project schedule (proposed and actual)

B. Format for Submissions at the Detailed Stage (Part 2)

If the County decides to proceed to the detailed phase (part 2) of review with one or more proposals, then proposers will be required to provide additional detailed information as a follow-up to the initial submission. The following are illustrative examples of the additional information which may be required by the County:

- 1. A topographical map (1:2,000 or other appropriate scale) depicting the location of the proposed project.
- 2. A conceptual site plan indicated proposed location and configuration of the project on the proposed site.

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3. Conceptual (single line) plans and elevations depicting the general scope, appearance and configuration of the project.
4. A detailed description of the proposed participation, use and financial involvement of the County in the project. Include the proposed terms and conditions for the project if they differ from the County's Standard Form contract for this type of project.
5. A list of public utility facilities, if any, that will be crossed by or run parallel to the qualifying transportation facility and a statement of the plans of the private entity to accommodate such crossings.
6. A statement and strategy setting out the plans for securing all necessary property. The statement must include the names and addresses, if known, of the current owners of the subject property as well as a list of any property the private entity intends to request the County to acquire.
7. 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.
8. 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.
9. A detailed discussion of assumptions about user fees or rates, lease payments and other service payments, and the methodology and circumstances for changes and usage of the project over the useful life of the project.
10. Identification and discussion 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.
11. Demonstration of consistency with appropriate local comprehensive or infrastructure development plans, transportation plans, the capital improvement plan and capital budget, or indication of the steps required for acceptance into such plans.

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12. Explanation of how the proposed project would impact local development plans of each affected locality or public entity.
13. Description of an ongoing performance evaluation system or database to track key performance criteria, including but not limited to schedule, cash management, quality, worker safety, change orders, and legal compliance.
14. Identification of any known conflicts of interest or other limitations that may impact the County's consideration of the proposal, including the identification of any persons known to the private entity who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to The Virginia State and Local Government Conflict of Interest Act, Chapter 31 (Virginia Code § 2.2-3100 et seq.) of Title 2.2.
15. Detailed analysis of the financial feasibility of the proposed project, including its impact on similar facilities operated or planned by the County. Include a detailed description of any financing plan proposed for the project, a comparison of that plan with financing alternatives that may be available to the County, and all underlying data supporting any conclusions reached in the analysis or the selection by the private entity of the financing plan proposed for the project.
16. A signed statement of accuracy for all data provided by the proposer shall be included.
17. Additional material and information as the County may request.

VI. PROPOSAL EVALUATION AND SELECTION CRITERIA

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

A. Project Characteristics

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

1. Project definition;
2. Proposed project schedule;
3. Operation of the project;

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4. Technology; technical feasibility;
5. Conformity to laws, regulations, codes, guidelines and standards;
6. Environmental impacts;
7. Property impacts;
8. Utility impacts;
9. State and local permits;
10. Maintenance of the project; and
11. Ongoing Operations.

B. Project Benefit and Compatibility

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

1. Community benefits, such as social and economic impacts should include but are not limited to community benefits, including the economic impact the project will have on the local community in terms of the amount of additional tax revenue to be generated for the County, the number of jobs generated in the community, and level of pay and fringe benefits of such jobs, the training opportunities for apprenticeships and other training programs for the community residents generated by the project, and the number and value of subcontracts generated for the community subcontractors.
2. Compatibility with existing transportation system and enhancement of community transportation system;
3. Community support or opposition, or both;
4. Public involvement strategy;
5. Compatibility with existing and planned facilities; and
6. Compatibility with local, regional, and state economic development efforts.

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7. Compatibility with the County's land use plan, transportation plan, and capital improvement plan.

C. Qualifications and Experience

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

1. Experience, training and preparation with similar projects;
2. Demonstration of ability to perform work;
3. Demonstrated record of successful past performance, including timeliness of project delivery, compliance with plans and specifications, quality of workmanship, cost-control and project safety;
4. Demonstrated conformance with applicable laws, codes, standards, regulations, and agreements on past projects;
5. Leadership structure;
6. Project manager's experience;
7. Management approach;
8. Organizational chart, including project staffing plans, the skill levels of the proposed task leaders, workforce, apprenticeship and other training programs offered for the project, and the proposed safety plans for the project;
9. Financial condition including the ability to obtain required sureties and insurance coverages; and
10. Project ownership.

D. Project Financing

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

1. Cost and cost benefit to the County;

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2. Financing and the impact on the debt or debt burden of the County;
3. Financial plan, including overall feasibility and reliability of the plan; operator's past performance with similar plans and similar projects; degree to which the operator has conducted due diligence investigation of proposed financial plan and results of any such inquiries or studies
4. Estimated cost;
5. Life-cycle cost analysis; and
6. The identity, credit history, and past performance of any third party that will provide financing for the project and the nature and timing of their commitment;
7. Such other items as the County deems appropriate.

The County may elect to accept the private entity's financing proposal or may select its own finance team, source, and financing vehicle.

E. Other Factors

Other factors that may be considered in the evaluation and selection of PPTA proposals include, but are not limited to the following:

1. The proposed cost of the qualifying transportation facility;
2. The general reputation, industry experience, and financial capacity of the private entity;
3. The proposed design, operation, and feasibility of the of the qualifying transportation facility;
4. The eligibility of the facility for accelerated selection, review, and documentation;
5. Local citizen and government comments;
6. Benefits to the public; including whether the project will lead to productivity or efficiency improvements in the County's processes or delivery of services to the public;
7. The safety record of the private entity;

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8. The ability of the facility to address the needs identified in the appropriate state, regional or local transportation plan by improving safety, reducing congestion, increasing capacity, and/or enhancing economic efficient; and
9. Other criteria that the County deems appropriate.

F. Timelines

Guidelines for determining applicable timelines are as follows:

1. For solicited proposals, the timeline for selecting proposals and negotiating an agreement will be consistent with the terms and conditions set forth in the Request for Proposals.
2. For unsolicited proposals, an estimated timeline will be developed and distributed within sixty (60) days of receipt of the proposal. The timeline will be subject to revision(s), as required.
3. Accelerated selection, review, and documentation timelines shall be permitted for proposals involving a qualifying facility that the County deems a priority, such as qualifying transportation facilities that have approved or pending state and federal environmental clearances, secured significant right of way, have previously allocated significant state or federal funding, or exhibit other circumstances that could reasonably reduce the amount of time to develop and/or operate the qualifying transportation facility.

VII. INTERIM AND COMPREHENSIVE AGREEMENTS

The County shall not accept liability for any part or phase of a project prior to entering into a properly executed interim or comprehensive agreement. Any interim or comprehensive agreement executed pursuant to the PPTA requires prior approval by the County Board. Any changes in the terms of an executed interim or comprehensive agreement shall be in the form of a written amendment.

A. Interim Agreement Terms

Interim agreements may be used when it is necessary or advisable to segment a project to produce distinct and clear deliverables necessary to keep the project moving towards development of a comprehensive agreement. An interim agreement may not be used to have the County assume risks that should be assumed by the proposer or to pay costs attributable to the private entity's efforts in making the proposal. Interim agreements require the same level of approval as Comprehensive Agreements.

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Development of an interim agreement is in the sole discretion of the County and in no way limits the rights reserved by the County to terminate the evaluation of any or all proposals at any time.

Prior to or in connection with the negotiation of the comprehensive agreement, the County may enter into an interim agreement with the private entity proposing the development or operation of the qualifying transportation facility. Such interim agreement may:

1. Permit the private entity to commence activities for which it may be compensated relating to the proposed qualifying transportation facility, including, but not limited to, project planning and development, design and engineering, environmental analysis and mitigation, survey, and ascertaining the availability of financing for the proposed facility or facilities;
2. Establish the process and timing of the negotiation of the comprehensive agreement; and
3. Contain any other provisions related to any aspect of the development or operation of a qualifying transportation facility that the parties may deem appropriate.

B. Comprehensive Agreement Terms

Prior to developing or operating any qualifying transportation facility, a selected private entity shall enter into a comprehensive agreement with the County as provided by the PPTA. Any such comprehensive agreement and any amendment thereto, must be approved by the County Board before it is entered into on behalf of the County and the Spotsylvania County Board Chairman must certify in writing to the Governor and the General Assembly that: The finding of public interest issued pursuant to Virginia Code § 33.2-1803.1 is still valid; the transfer, assignment, and assumption of risks, liabilities, and permitting responsibilities and the mitigation of revenue risk by the private sector have not materially changed since the finding of public interest was issued; and the public contribution requested by the private entity does not exceed the maximum.

As provided by the PPTA, the terms of the comprehensive agreement shall include but not be limited to:

1. Delivery of maintenance, performance and payment bonds or letters of credit in connection with any development or operation of the qualifying transportation project, in the forms and amounts satisfactory to the County;

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2. Review and approval of plans and specifications for the qualifying transportation project by the County;
3. The right of the County to inspect the qualifying transportation project to ensure compliance with the comprehensive agreement and any development plans and specifications;
4. Maintenance of a policy or policies of liability insurance or self-insurance, each in form and amount satisfactory to the County and reasonably sufficient to insure coverage of tort liability to the public and employees and to enable the continued operation of the qualifying transportation facility;
5. Monitoring of the practices of the private entity by the County to ensure proper maintenance;
6. Reimbursement to be paid to the County for services provided by the County;
7. Distribution of any earnings in excess of the maximum rate of return as negotiated in the comprehensive agreement, in accordance with Subsection E of Virginia Code § 33.2-1808. Without limitation, excess earning may be distributed to the Transportation Trust Fund, to the responsible public entity, or to the private entity for debt reduction or they may be shared with appropriate public entities, within the discretion of the County;
8. Filing by the private entity of appropriate financial statements on a periodic basis;
9. The agreement may, in accordance with Subsection H of Virginia Code § 33.3-1808, provide for the development and/or operation of phases or segments of the qualifying transportation facility, in the discretion of the County.
10. Terms governing the rights and responsibilities of the County and the private entity in the event that the comprehensive agreement is terminated or there is a material default by the private entity, including the conditions governing assumption of the duties and responsibilities of the private entity by the County and the transfer or purchase of property or other interests of the private entity by the County as defined in Virginia Code § 33.2-1813;
11. Providing for such user fees, lease payments, or service payments, if any, as may be established from time to time by agreement of the parties, which shall be the same for persons using the facilities under like conditions and shall not materially discourage use of the qualifying transportation facility. Classifications according to reasonable categories for assessment of user fees may be made;

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12. Requiring a copy of any service contract to be filed with the County and providing that 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;
13. Guaranteed cost and completion guarantees related to the development and/or operation of the qualified transportation facility and payment of damages for failure to meet the completion guarantee;
14. The date of termination of the private entity's authority and duties and dedication to the County;
15. The terms and conditions under which the responsible public entity may contribute financial resources, if any, for the qualifying transportation facility;
16. Any comprehensive agreement entered into shall include, in consultation with the Virginia State Police (VSP), in accordance with Subsection I of Virginia Code § 33.2-1808, a provision requiring funding for adequate staffing, as defined therein, by the VSP for general law enforcement services during both development and operation of the qualifying transportation facility.
17. Any other terms and conditions the County determines serve the public purpose of the PPTA; and
18. Any other provisions required by applicable law.

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

Parties submitting proposals understand that representations, information and data supplied in support of or in connection with proposals play a critical role in the competitive evaluation process and in the ultimate selection of a proposal by the County. Accordingly, as part of the comprehensive agreement, the prospective operator and its team members shall certify that all material representations, information and data provided in support of, or in connection with, a proposal is true and correct. Such certifications shall be made by authorized individuals who have knowledge of the information provided in the proposal. In the event that material changes occur with respect to any representations, information or data provided for a proposal, the prospective operator shall immediately notify the County of same. Any violation of this section of the comprehensive agreement shall give the County the right to terminate the agreement, withhold payment or other consideration due, and seek any other remedy available under the law.

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C. Notice and Posting Requirements

1. For 30 days prior to entering into an interim agreement, the County shall provide an opportunity for public comment, available on the County's procurement website, related to the proposals. Though not required by this policy, the public comment period may include a public hearing before the Board of Supervisors, at the sole discretion of the County Administrator, or designee.
2. For 30 days prior to the planned issuance of a final request for proposals, the County shall provide an opportunity for public comment, available on the County's procurement website, related to the draft comprehensive agreement. Though not required by this policy, the public comment period may include a public hearing before the Board of Supervisors, at the sole discretion of the County Administrator, or designee.
3. 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 County, the County shall publicly post the proposed agreement on the County Procurement Division website.
4. Prior to entering into a comprehensive agreement the County Administrator shall certify in writing to the Governor and the General Assembly that the transfer, assignment, and assumption of risks, liabilities, and permitting responsibilities or the mitigation of revenue risk by the private sector enumerated in the finding of public interest issued pursuant to Section II (A) not materially changed since the finding was issued and the finding of public interest is still valid. Changes to the project scope that do not impact the assignment of risks or liabilities or the mitigation of revenue risk shall not be considered material changes to the finding of public interest, provided that such change was presented in a public meeting to the County Board of Supervisors.
5. Once an interim agreement or a comprehensive agreement has been executed, the County shall make procurement records available for public inspection, in accordance with the Virginia Freedom of Information Act (Virginia Code § 2.2-3700 et seq.).
 - a. Such procurement records shall include documents initially protected from disclosure on the basis that the release of such documents would adversely affect the financial interest or bargaining position of the County.
 - b. Such procurement records shall not include (i) trade secrets of the private entity or (ii) financial records, including balance sheets or financial statements

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of the private entity that are not generally available to the public through regulatory disclosure or otherwise.

VIII. INDEPENDENT AUDIT

If the construction costs of the proposed qualifying transportation facility exceed \$50 million and prior to entering into an agreement with the private entity, the County must comply with Virginia Code § 33.2-1803 and engage one or more consultants of its choosing with the expertise required to determine the accuracy and validity in their audit of such things as traffic, ridership, and the ability to capture the ridership assumed in the proposal, and revenue and cost estimates provided as part of the Proposer's proposal. The County also must review all the public costs and other liabilities which may require the expenditure of public funds. Such liabilities include improvements to other transportation facilities required as a result of the proposal, the Proposer's failure to reimburse the County for services rendered, and other risks to which the County may be exposed should the Proposer default on the interim agreement, the comprehensive agreement or bonds issued as part of the financing for the project. The Proposer shall reimburse the County for the costs for the independent audit and the results of the audit must be disclosed in accordance with FOIA.

IX. GOVERNING PROVISIONS

In the event of any conflict between these guidelines and procedures and the PPTA, the terms of the PPTA shall control.

X. POLICE POWERS

In accordance with Virginia Code § 33.2-1816, all police officers of the Commonwealth and of each affected locality or public entity shall have the same powers and jurisdiction within the limits of such qualifying transportation facility as they have in their respective areas of jurisdiction, and such police officers shall have access to the qualifying transportation facility at any time for the purpose of exercising such powers and jurisdiction. This authority does not extend to the private offices, building garages, and other improvements of the private entity to any greater degree than the police power extends to any other private buildings and improvements.

To the extent the transportation facility is a road, bridge, tunnel, overpass or similar transportation facility for motor vehicles, the traffic and motor vehicle laws of the Commonwealth, or if applicable, any locality or public entity shall be the same as those applying to conduct on similar transportation facilities in the Commonwealth or such locality or public entity. Punishment for offenses shall be as prescribed by law for conduct occurring on similar transportation facilities in the Commonwealth or such locality or public entity.

Adopted by the Board of Supervisors
May 22, 2018

SPOTSYLVANIA COUNTY GUIDELINES – PUBLIC-PRIVATE TRANSPORTATION ACT

XI. SOVEREIGN IMMUNITY

Nothing herein shall be interpreted to waive the County's sovereign immunity or the sovereign immunity, as applicable, of any other public entity.