

Albemarle County, Virginia

**Guidelines for the Implementation of the
Public-Private Transportation Act of 1995**

Adopted _____, 2024

**Albemarle County, Virginia Guidelines for the Implementation of the
Public-Private Transportation Act of 1995**

Table of Contents

I.	INTRODUCTION	4
II.	THE ACT	4
III.	DEFINITIONS.....	4
IV.	EXECUTIVE SUMMARY	4
V.	GENERAL PROVISIONS.....	5
A.	UNSOLICITED PROPOSALS	5
1.	<i>Unsolicited Proposals Permitted</i>	<i>5</i>
2.	<i>Decision to Accept and Consider Unsolicited Proposal; Notice.....</i>	<i>5</i>
3.	<i>Unsolicited Proposals Fees</i>	<i>6</i>
B.	SOLICITED PROPOSALS	6
C.	PROPOSAL SUBMISSION	7
D.	WITHDRAWING A PROPOSAL	7
E.	REVIEW BY CONSULTANT.	7
F.	VIRGINIA FREEDOM OF INFORMATION ACT	7
G.	USE OF PUBLIC FUNDS.....	8
H.	APPLICABILITY OF OTHER LAWS	8
I.	SCHEDULE	8
J.	FINDING OF PUBLIC INTEREST	8
VI.	SOLICITED AND UNSOLICITED PROPOSALS.....	9
A.	PROPOSAL CONTENTS.....	9
B.	INTRODUCTION OF FIRM	9
C.	PROJECT DESCRIPTION	11
D.	PROJECT BENEFIT AND COMPATIBILITY	12
E.	PROJECT FINANCING	12
F.	REFERENCES.....	14
VII.	DETAILED REVIEW.....	14
A.	PROCEDURE FOR DETAILED REVIEW	14
B.	INFORMATION REQUIRED FOR DETAILED REVIEW.....	15
VIII.	PROPOSAL EVALUATION AND SELECTION CRITERIA	16
IX.	AFFECTED JURISDICTIONS	16

X.	THE COMPREHENSIVE AND/OR INTERIM AGREEMENT	16
A.	INTRODUCTION	16
B.	INTERIM OR COMPREHENSIVE AGREEMENT TERMS	17
C.	USE OF INTERIM AGREEMENT.....	19
D.	USE OF COMPREHENSIVE AGREEMENT	19
E.	AMENDMENTS	20
F.	COMPREHENSIVE AGREEMENT PROVISIONS RELATING TO CONSTRUCTION PROJECTS.....	20
G.	COMPREHENSIVE AGREEMENT PROVISIONS RELATING TO PRIVATE ENTITY LEGAL STRUCTURE	21
H.	POSTING OF PROPOSALS: PUBLIC COMMENT; PUBLIC ACCESS TO PROCUREMENT RECORDS.	21
	PROCUREMENT APPROVAL FORM.....	23

I. INTRODUCTION

The Public-Private Transportation Act of 1995, codified in Chapter 18 of Title 33.2 of the Code of Virginia (the “Act” or the “PPTA”) is the legislative framework enabling the Commonwealth of Virginia, qualifying local governments, and certain other political entities to enter into agreements allowing private entities to develop or operate qualifying transportation facilities. These Guidelines are consistent with the Virginia Public-Private Transportation Act of 1995 and are intended to guide in the selection of projects as authorized by the PPTA.

II. THE ACT

The Act grants responsible public entities the authority to allow private entities to “develop” or “operate” (as those terms are defined in the Act) qualifying transportation facilities if the public entity determines that (i) there is a need for the facilities and (ii) private involvement may provide the facilities to the public in a timely or cost-effective fashion. Individually-negotiated Interim and Comprehensive Agreements will define the respective rights and obligations of the responsible public entity and the private entity. Where these Guidelines conflict with the Act, compliance with the Act is mandatory.

III. DEFINITIONS

Unless a term is defined below, these Guidelines adopt the definitions in Va. Code § 33.2-1800.

“County” means the County of Albemarle and, relative to “decisions made by the County”, the term “County” also means at the direction of the County Executive, unless otherwise specified herein.

“Highway”, “road”, and “roadway” have the definitions given in Va. Code § 33.2-100.

Throughout these Guidelines, “responsible public entity” means the County of Albemarle.

IV. EXECUTIVE SUMMARY

The Act allows both solicited and unsolicited project proposals. The major steps involved in evaluating, selecting, and implementing projects are similar for both solicited and unsolicited proposals.

Private entities may also propose financing methods, including the imposition of user fees or service payments as contemplated by the Act. Financing arrangements may include the issuance of debt, equity, or other obligations. A proposer may enter into sale and lease back transactions and secure any financing with a pledge of, security interest in, or lien on, any or all of its property, including all of its property interests in the qualifying transportation facility.

The selection process for project proposals under the Act is not subject to the Virginia Public Procurement Act, (Va. Code § 2.2-4300 et seq.) except for Article 6, *Ethics in Public Contracting*, which is hereby incorporated by reference.

These Guidelines govern all County PPTA projects. The County Executive will designate a Selection Committee to evaluate proposals and negotiate Interim Agreements and Comprehensive Agreements. The County Executive will implement these Guidelines, receive proposals, and respond to inquiries regarding the PPTA or these Guidelines.

A Selection Committee will be chaired by a County employee of the County Executive's choosing, and include the Director of Facilities & Environmental Services, Director of Planning, and Director of Finance. The County Executive may also name one or more VDOT representatives to the Selection Committee.

V. GENERAL PROVISIONS

A. Unsolicited Proposals

1. Unsolicited Proposals Permitted

The Act permits the County to consider unsolicited proposals from private entities to acquire, construct, improve, maintain develop, or operate qualifying transportation facilities. The County will evaluate unsolicited proposals that meet the requirements of the Act and these Guidelines. After accepting an unsolicited proposal, the County will publish a notice inviting others to submit competing proposals.

The deadline for County receipt of any competing proposals will be as stated in the notice, but in any case, not less than 120 days from publication of the notice. All proposals submitted by such deadline will be considered.

2. Decision to Accept and Consider Unsolicited Proposal; Notice

Upon receipt of any unsolicited proposal and payment of the required fees (as set out in these Guidelines), the Selection Committee will recommend whether to accept the unsolicited proposal for publication and further consideration. The Board of Supervisors will consider unsolicited proposals forwarded by the Selection Committee and decide whether to publish and further consider them. The criteria used to determine the acceptability of a proposal include, without limitation, the requirements set out in Va. Code § 33.2-1803(C).

If the Board of Supervisors accepts an unsolicited proposal, the County will publish it by posting a notice in a public area regularly used by the County for posting of public notices and on the County's website for a period of not less than 45 days. The notice will state that the

County (i) has received and accepted an unsolicited proposal under the PPTA, (ii) intends to evaluate the proposal, (iii) may negotiate a Comprehensive Agreement with the proposer based on the proposal, and (iv) will accept for simultaneous consideration any competing proposals that comply with these Guidelines that are received by the County within 120 days following the date of posting of the notice. The notice will summarize the proposed qualifying transportation facility or facilities, identify their proposed locations, and will outline the opportunities for public comment. Copies of unsolicited proposals will be available upon request, subject to the provisions of the Virginia Freedom of Information Act (“FOIA”) (Va. Code § 2.2-3700 et seq.). and the PPTA. At least one copy will be made available for public inspection at the County Executive’s Office.

If federal aid funds are anticipated in the project, the County will notify the Federal Highway Administration (FHWA). If state aid funds are anticipated in the project, the County will notify the Virginia Department of Transportation (VDOT).

Proposals received in response to a published unsolicited proposal will not be charged a fee for processing, reviewing, and evaluating

3. Unsolicited Proposal Fees

An unsolicited proposal must be accompanied by a processing, review, and evaluation fee of \$5,000.00. If an unsolicited proposal is accepted for publication, the fee will be refunded. Failure to submit all fees will result in suspension of consideration of a proposal. Fees must be submitted by cashier’s check payable to the County of Albemarle.

B. Solicited Proposals

The County may request proposals from private entities to acquire, construct, improve, maintain, develop, or operate qualifying transportation facilities provided that a finding of public interest has been issued (see Va. Code § 33.2-1803.1). Such solicitations may invite private entities to identify projects or may solicit proposals on identified projects.

The RFP will specify information and documents that must accompany each proposal and the factors that will be used in evaluating the submitted proposals. The RFP will also set out other terms, including any unique capabilities or qualifications that will be required of a private entity. Pre-proposal conferences may be held.

No fees will be charged for processing, reviewing, or evaluating a solicited proposal.

The County may instead issue a Request for Information (RFI) inviting private entities to express interest in developing or operating one or more qualifying transportation facilities. No fees will be charged for processing, reviewing, or evaluating responses to an RFI.

C. Proposal Submission

1. Proposals must be clearly identified as a “PPTA PROPOSAL.” To be considered, one original, five printed copies, and an electronic copy (on appropriate physical media) of any unsolicited proposal must be submitted along with the fee, if any, set out in these Guidelines to the County Executive’s Office.
2. Under Va. Code § 33.2-1805(A), proposers must provide copies of their proposal to the governing body of each affected public body (county, city, town, or regional authority) other than the County of Albemarle in which the proposed project is to be located. The proposer must forward a copy of the proposal to VDOT and FHWA, if required by the PPTA.
3. Proposers may be required to give one or more oral presentations.
4. The County may request clarification of any submissions.
5. Proposals must certify that all material representations, information, and data provided with a proposal are true and correct. If a material change occurs with respect to any representations, information, or data provided, the private entity must immediately notify the County. Any violation of this provision is a material breach of the resulting Interim and Comprehensive Agreement.

D. Withdrawing a Proposal

An applicant may withdraw its proposal at any point through Detailed Review, in writing. An applicant that withdraws its proposal may submit a new proposal if a new applicant could have submitted a proposal; the resubmitted proposal will be treated as a new proposal in all respects, including the payment of fees.

E. Review by Consultant

The County may submit a proposal to an outside consultant or advisor for review, without notice to the proposer. Such consultant or advisor will be required to maintain the confidentiality of information so designated.

F. Virginia Freedom of Information Act

All proposals are subject to FOIA. Proposals containing confidential or proprietary information must, at the time of submission (i) invoke the appropriate FOIA exclusion (including citation), (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. A proposal will not be protected from disclosure if the entire proposal is so designated.

The County will determine whether protection is appropriate and communicate its determination to the proposer. If the County determines that less protection than requested is appropriate, the proposer may withdraw its proposal.

Once a Comprehensive Agreement has been entered, non-proprietary or confidential procurement records will be available to the public. The County will comply with any Court order regarding access to procurement records, notwithstanding these Guidelines.

G. Use of Public Funds

Constitutional, statutory, and County ordinance requirements apply to the appropriation and expenditure of public funds, including to Interim and Comprehensive Agreements entered under the PPTA.

H. Applicability of Other Laws

The applicability of the Virginia Public Procurement Act (the "VPPA") to PPTA procurement is set forth in the PPTA.

Private entities must comply with applicable federal, state, and local laws.

I. Schedule

The following schedule sets out the typical time frame within which the proposal selection process occurs, but may vary widely.

Review of Unsolicited Proposal	1 – 5 Months
Receipt of Solicited Proposals	1 – 2 Months
Selection of Proposals for Detailed Review	1 - 3 Months
Detailed Review	8 – 14 Months
Final Project Selection	1 – 3 Months
Negotiation of Interim or Comprehensive Agreement	2 - 12 Months

All proposals advanced to the Detailed Review phase will be provided a specific, anticipated, schedule for evaluation of the proposals.

J. Finding of Public Interest

Before issuing a Request for Proposals, the County Executive will make a finding of public interest. The finding of public interest will include the information required by Va. Code § 33.2-1803.1.

VI. SOLICITED AND UNSOLICITED PROPOSALS

A. Proposal Contents

1. The Act requires that proposals meet three criteria, among others. First, the proposal must seek approval to develop or operate specified transportation facilities. Second, the transportation facilities specified must be one or a combination of the following: a road, bridge, tunnel, overpass, ferry, airport, mass transit facility, vehicle parking facility, port facility, or similar commercial facility used for the transportation of persons or goods together with any buildings, structures, parking areas, appurtenances, and other property needed to operate the facility, not including a commercial or retail use or other enterprise not essential to the transportation of persons or goods. Third, the County must currently have or could assert the power itself to perform the functions that the proposer seeks to perform with respect to at least a portion of the specified transportation facilities.
2. Proposals must be signed by an authorized representative of the private entity, and contain all information required by these Guidelines. Proposers failing to submit all information requested for proposals may be given an opportunity to promptly submit missing information or may be given a lowered evaluation of the proposal.
3. Proposals submitted for consideration should include a scope of work and provide enough information about the transportation facility to determine whether it satisfies the evaluation and selection criteria.
4. Proposals should be organized in the order requested below. All pages of the proposal should be numbered.
5. The proposal should contain a table of contents that references the Guideline requirements. Information that does not fall within any of the requirements should be at the end of the proposal.

B. Introduction of Firm

Information included in this section:

1. General Information:
 - a. Legal name of firm
 - b. Address
 - c. Tax ID number
 - d. Type of business structure

- e. Contact person and contact information
 - f. Debarment status of the firm or any of its principals
 - g. Conflict of Interest Statement
2. Describe the experience of the firm or firms making the proposal and the key principals involved, including experience with projects of comparable size and complexity.
 3. Describe the length of time in business, business experience, public sector experience, and other engagements.
 4. Describe the past safety performance record and current safety capabilities.
 5. Describe the technical performance history on recent projects of comparable size and complexity.
 6. Disclose for the past three years any of the following:
 - a. bankruptcy filings
 - b. liquidated damages paid
 - c. assessments or penalties
 - d. court or arbitration claims, judgments, or settlements in contract disputes
 - e. contract defaults, contract terminations
 - f. license revocations, suspensions, other disciplinary actions
 - g. prior debarments or suspensions by a governmental entity
 - h. denials of prequalification, findings of non-responsibility
 - i. maximum five years safety performance data
 - j. "Experience Modification Rating" and issuing insurance company
 - k. "Recordable Incidence Rates" "Lost Time Incidence Rates"
 - l. OSHA 200 Summary and OSHA 300A Forms
 - m. OSHA violations, dates, and disposition
 - n. violations of any federal, state or local criminal or civil law by the firm or its principals
 - o. criminal indictments or investigations of the firm or its principals
 7. Identify any firms that will provide design, construction, or completion guarantees, and a description of such guarantees.
 8. Provide resumes of the key individuals who will be involved in the project.
 9. For each firm or major subcontractor (\$1 million or more) that will be used in the project, provide a statement listing all of the firm's projects and clients for the

past 3 years with contact information for those clients (names/addresses/telephone numbers/email). If a firm has worked on more than 10 projects during this period, it may limit the project list to 10, but must first include all projects similar in scope and size to the proposed project, and second, it must include as many of its most recent projects as possible. Each firm or major subcontractor must submit all performance evaluation reports or other documents provided by its clients during the past 3 years.

10. Identify the Project Administrator, and if the person works for the principal firm. If not, clearly define the role and responsibility of the Project Administrator relative to the members of the firm. Provide information regarding the relevant experience the Project Administrator has leading this type and magnitude of project.
11. Provide the names, addresses, email, and telephone numbers of persons within the firm or consortium of firms who may be contacted for further information.
12. 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.
13. Identify proposed plan for obtaining sufficient qualified workers in all trades required for the project.
14. 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.
15. Describe worker safety training programs, job-site safety programs, accident prevention programs, safety and health plans, including incident investigation and reporting procedures.

C. Project Description

1. Describe the project, including its conceptual design and all proposed interconnections with other transportation facilities. Describe the proposed project in sufficient detail to identify the project's intent, locations, and the communities that may be affected. Include a description of any components that are expected to generate revenue and for whom.

2. Identify the proposed ownership arrangements for each phase of the project and indicate proposed legal liabilities and responsibilities during each phase of the project.
3. Describe any work to be performed by the County or any other public entity.
4. Describe plans to secure necessary property, including the names and addresses, of the current owners, as well as any property the proposer intends to request the County to acquire.
5. Include a list of all federal, state, and local permits and approvals required for the project and a schedule for obtaining them.
6. Indicate whether environmental, archaeological, or other assessments must be completed.
7. Propose a project schedule.
8. Propose contingency plans for addressing public needs if the project is not completed on schedule, and how the risk and liability for delays.
9. State assumptions related to ownership, risk and liability, law enforcement, and operation of the project, and the existence of any restrictions on the public entity's use of the project.
10. List any other assumptions relied on for the project to be successful.
11. List any contingencies that must occur for the project to be successful.
12. Provide information on phased or partial openings of the project before completion of the entire work.
13. Describe any architectural, building, engineering, or other applicable standards that the proposed project will meet.

D. Project Benefit and Compatibility

1. Identify anticipated positive and adverse community, economic, environmental, or other impacts. Include the amount of additional tax revenue, jobs, level of pay and fringe benefits of those jobs, training opportunities and other programs, and the number and value of local subcontracts generated by the project.
2. Propose strategies to mitigate adverse impacts.

3. Describe how the project will compliment and be compatible with existing and anticipated other transportation systems, economic development goals, and the County's comprehensive plan.
4. Describe how the project will increase performance, safety, mobility, or meet transportation demands.
5. Identify anticipated public or governmental support or opposition for the project.
6. Propose a plan to involve and inform the public and business community.

E. Project Financing

1. Provide a preliminary estimate and estimating methodology of the cost of the work by phase, segment, or both.
2. 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.
3. 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.
4. Identify all anticipated risk factors and methods for dealing with these factors.
5. Describe the methods and remedies associated with any financial default.
6. 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 security or pledge of County revenue and expected effect on the County's debt burden.
7. Identify any proposed user fees or other third-party payments.

8. Provide financial information that indicates the private entity's financial stability and ability to finance the project.
9. Identify the amounts and the terms and conditions for any revenue sources.
10. Identify any aspect of the project that could disqualify the project from obtaining tax-exempt financing.
11. 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.
12. The cost analysis of a proposal should not be linked solely to the financing plan proposed, as the County may determine to finance the project through other available means and may select its own finance team, funding sources, or financing vehicle.

F. References

Provide a contact person of a client for which the private entity has completed a relevant project. More than one reference may be provided. References should include:

1. Name of client
2. Name, address, and telephone number of the contact person
3. Summary of the project, including original budget and final cost
4. Project schedule, proposed versus actual

VII. DETAILED REVIEW

A. Procedure for Detailed Review

If the Selection Committee decides to proceed to the detailed stage of review with one or more proposals, the proposers will submit supplemental information, as discussed in Format of Submission for Detailed Review below. The Selection Committee will evaluate the additional information submitted by proposers and make a recommendation to the Board of Supervisors based on their review of proposals.

The Selection Committee can make one of the following recommendations to the Board of Supervisors:

1. Recommend one or more Interim Agreements
2. Recommend one or more Comprehensive Agreements

3. Recommend no Agreement be entered into
4. Recommend re-solicitation for proposals
5. Recommend an agreement with another public entity, instead of a private entity. Such agreements are not subject to further PPTA procedures

B. Information required for Detailed Review

The following information must be provided by each private entity selected for Detailed Review, unless waived in writing by the Selection Committee. Some of this information is similar to that required in Solicited and Unsolicited Proposals, but greater detail is expected at the Detailed Review phase, reflecting the greater preparation expected by this stage. The County may request additional information in response to a proposer's submission.

1. A topographical map (1:2,000 or other appropriate scale) depicting the location of the transportation facility.
2. A description of the transportation facility, including the conceptual design of the facility and all proposed interconnections with other transportation facilities.
3. The proposed dates for development and operation of the transportation facility along with an estimate of the life-cycle costs of the transportation facility.
4. A statement setting forth (i) the method by which the private entity proposes to secure any property interests required for the transportation facility; (ii) the names and addresses of the owners of those property interests; and (iii) a list of any property the proposer intends to request the County to obtain.
5. How the project will affect the transportation plans of other jurisdictions.
6. Describe how the project will increase performance, safety, mobility, or meet transportation demands.
7. All permits and approvals – federal, state, and local – required to develop or operate the transportation facility, and a schedule for obtaining them.
8. The public utility facilities that will be impacted by the transportation facility and plans to address those impacts.
9. Plans for developing and operating the transportation facility.
10. Anticipated revenue, debt, and equity, and which party will incur each.
11. The County's proposed participation and financial involvement, including what

existing public lands, facilities, and improvements will be needed to complete the project.

12. The firms that will provide design, construction, and completion guarantees, and a description of those guarantees.
13. The project's anticipated cost and revenue throughout its life-cycle, and the estimated useful life. Explain the calculation methodology and assumptions. Assumptions about use and user fees must be addressed.
14. Any government or public support or opposition. Provide resolutions bodies, minutes of meetings, letters, and other documentation.
15. Demonstration of the project's consistency with the County's Comprehensive Plan.
16. Description of the private entity's performance evaluation system or method to track performance criteria, including schedule, cash management, quality, worker safety, change orders, and legal compliance.

VIII. PROPOSAL EVALUATION AND SELECTION CRITERIA

The Selection Committee will evaluate all Detailed Review phase proposals based on the criteria outlined above and specific criteria outlined in its solicitation. It will then recommend whether the Board of Supervisors should permit the County to negotiate a Comprehensive Agreement or an Interim Agreement with one or more private entities.

IX. AFFECTED JURISDICTIONS

Detailed Review proposals must also be submitted to all other affected jurisdictions, as well, inviting those other jurisdictions to provide comment to the County on how the project will affect those jurisdictions' safety, mobility, or transportation demands. Those jurisdictions will have 60 days from receipt of the request to comment on the proposal.

X. THE COMPREHENSIVE OR INTERIM AGREEMENT

A. Introduction

If approved by the Board of Supervisors, the selected private entity will be invited to negotiate either an Interim or a Comprehensive Agreement that defines the rights and obligations of the County and the private entity. The County may seek external advice, as well as further comment from affected jurisdictions, during negotiations.

The Selection Committee will negotiate the Comprehensive or Interim Agreement. At the conclusion of negotiations, the Selection Committee will submit a draft Interim or Comprehensive Agreement, along with its recommendation, to the Board of Supervisors. The Board of Supervisors will decide whether to authorize the County Executive to execute an Agreement.

B. Interim or Comprehensive Agreement Terms

An Interim or Comprehensive Agreement may address:

1. The rights and responsibilities to develop and operate the transportation facility, the termination date for the private entity's authority under the agreement, and the conditions under which rights and responsibilities will transfer from one party to another.
2. The liability of the private entity and the County for property damage, personal injury, necessary repair, hazardous waste remediation, and other unforeseen damage.
3. How user fees will be established and amended. User fees will be reasonable, considering lease payments, service payments, and compensation.
 - a. A copy of any service contract must be filed with the County.
 - b. A schedule of the current user fees must be made available by the private entity to any member of the public on request.
4. The reasonable maximum return or rate of return on investment authorized for the private entity to earn:
 - a. The formula by which such rate of return will be calculated;
 - b. The distribution of any earnings in excess of the negotiated maximum rate of return; and
 - c. The payment of remaining revenues to the private entity upon the occurrence and during the continuation of material default, as remedy of such default, subject to the negotiated maximum rate of return.
5. The performance milestones that will be required of the private entity.
6. The right of the private entity to access County property, subject to permitting and other legal requirements.
7. The obligation of the private entity to acquire the right to cross utilities, other property, and waterways, and the obligation to pay the cost to do so.

8. How all involved entities will interact to establish interconnections and interoperability between the project's transportation facility and other transportation facilities.
9. Whether and for what parcels the County must exercise eminent domain.
10. The design, construction, operation, and maintenance standards with which the private entity must comply.
11. The private entity's responsibility to conform its work to standards acceptable to the County.
12. The rights of the County and its agents to inspect the construction, operation, and maintenance of the transportation facility.
13. The right of the private entity to make and enforce rules for the transportation facility.
14. The terms under which the private entity will reimburse the County for services.
15. The terms under which the County may make grants or loans, or contribute financial or in-kind resources for the development and operation of the transportation facility.
16. Whether the County will dedicate public property to be operated or otherwise used by the private entity; conveyance of that property through a dedication as allowed by the PPTA (Va. Code § 33.2-1806), which may include licenses, franchises, easements, or any other interest necessary.
17. The events that constitute default by the private entity, the private entity's right to notice and cure, and the remedies available to the County.
18. The events that constitute default by the County, the County's right to notice and cure, and the remedies available to the private entity.
19. The terms under which the County may terminate for convenience, which may include payment of a reasonable development fee and development expenses.
20. The events that constitute force majeure and the remedies available for them.
21. The insurance and bonding requirements at each stage of development or operation of the transportation facility.

- a. Performance and payment bonds must be in form and amounts satisfactory to the County, and reasonably sufficient to ensure coverage of tort liability as set out in the PPTA (Va. Code § 33.2-1804(4)).
 - b. Insurance policies must be filed with the County and timely updated.
- 22. Cost and completion guarantees, and what damages must be paid to the County for failure to meet those guarantees.
- 23. The obligation of the private entity to maintain records, to allow inspection and audit, and to provide regular reports to the County.
- 24. The obligation of the private entity to provide financial statements to the County.
- 25. The conditions under which the private entity or the County may assign its rights under the Interim or Comprehensive Agreement.
- 26. Other requirements that may be added to the PPTA, and any other terms that the Board of Supervisors deems necessary.
- 27. Funding for state police, as required by Va. Code § 33.2-1808.

C. Use of Interim Agreement

The County may determine that an Interim Agreement before or in connection with the negotiation of the Comprehensive Agreement is warranted. An Interim Agreement may not address all of the matters contemplated in Subsection B. An Interim Agreement may only permit the private entity to commence the following types of activity:

- 1. project planning and development, advance right of way acquisition, design and engineering, environmental analysis, and mitigation.
- 2. surveying, conducting transportation and revenue studies, and ascertaining the availability of financing for the proposed facility or facilities.
- 3. or other similar work.

The Interim Agreement may establish the process and timing of the negotiation of the Comprehensive Agreement.

D. Use of Comprehensive Agreement

Before entering into a Comprehensive Agreement, the County Executive will make the certification to the Governor and the General Assembly required by the PPTA (Va. Code § 33.2-1803).

Changes to the project scope that do not impact the assignment of risks or liabilities or the mitigation of revenue risk will not require a change to the finding of public interest, provided that such changes were presented in a public meeting to the Board of Supervisors.

If the Board of Supervisors approves a Comprehensive Agreement, the terms of that Agreement will control the remainder of the project.

E. Amendments

Amendments to an Interim or Comprehensive Agreement must be approved by the Board of Supervisors.

F. Comprehensive Agreement Provisions Relating to Construction Projects.

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

1. The private entity must provide the County with single-contact responsibility and liability for all design and construction activities.
2. The private entity must perform a geotechnical investigation of subsurface conditions at the project site. The private entity bears the risk of inadequate investigation or improper interpretation of the results. Only if expressly stated in the Comprehensive Agreement, the County may assume partial risk for subsurface conditions that could not reasonably have been foreseen through a geotechnical investigation meeting the ordinary standard of care.
3. The private entity must perform an environmental assessment and any other studies required by federal, state, or local laws at the project site. The private entity will bear the risk of inadequate assessment and any other studies or improper interpretation of the results. Only if expressly stated in the Comprehensive Agreement, the County may assume partial risk for environmental conditions that could not reasonably have been foreseen through an environmental assessment meeting the ordinary standard of care.
4. The County encourages private entities to propose a formula for the mutual sharing of cost savings realized during construction. Mutually agreed-upon terms

for the sharing of savings will be incorporated in the Comprehensive Agreement.

G. Comprehensive Agreement Provisions Relating to Private Entity Legal Structure.

The County may enter into Comprehensive Agreements with private entities that have formed joint ventures. In such cases, one or more of the individual private entities must provide a surety on behalf of all involved private entities participating in the joint venture. This requirement is in addition to the statutory requirement for a performance bond.

H. Posting of Proposals; Public Comment; Public Access to Procurement Records

Proposals will be posted for public inspection within 10 working days after acceptance as follows:

1. Trade secrets and proprietary information that would be protected from disclosure under the Virginia Freedom of Information Act will not be posted, if the private entity complies with the requirements of that Act.
2. For 30 days before entering an Interim or Comprehensive Agreement, the County will provide an opportunity for public comment on the proposals received. The Board of Supervisors may set a public hearing during that period.
3. Once negotiation of an Interim or a Comprehensive Agreement is complete and a decision to award is made, the County will (i) post the major business points of the interim or comprehensive agreement, including the projected use of any public funds, on its website and on the Department of General Services' central electronic procurement website; (ii) outline how the public can submit comments on those major business points; and (iii) present the major business points of the interim or comprehensive agreement, including the use of any public funds, to the Board of Supervisors at a regularly scheduled meeting.
4. Once an Interim or Comprehensive Agreement has been signed by all parties, the County will make procurement records available for public inspection, in accordance with the Virginia Freedom of Information Act.
5. Cost estimates relating to a proposed procurement transaction prepared by or for the County are not open to public inspection.
6. Any inspection of procurement transaction records under this section is subject to reasonable restrictions to ensure the security and integrity of the records.
7. The provisions of this section apply to accepted proposals, regardless of whether an Agreement is entered.

APPROVED:

Jim H. Andrews, Chair
Albemarle County Board of Supervisors

_____, 2024

PROCUREMENT APPROVAL FORM

Under Virginia Law, responsible public entities must follow the provisions of the Virginia Public Procurement Act (Chapter 43 of the *Va. Code*) unless, as provided in *Va. Code* § 33.2-1803.1, “the chief executive officer of the responsible public entity shall make a finding of public interest.” This determination must be made in writing and at a minimum must contain the following information:

1. A description of the benefits expected to be realized by the responsible public entity through the development or operation of the transportation facility, including person throughput, congestion mitigation, safety, economic development, environmental quality, and land use.
2. An analysis of the public contribution necessary for the development or operation of the facility, including a maximum public contribution that will be allowed.
3. A description of the benefits to the County expected to be realized through the use of the PPTA as compared to developing or operating the transportation facility through other procurement methods.
4. A statement of the risks, liabilities, and responsibilities expected to be transferred, assigned, or assumed by the County, which shall include the following:
 - a. A statement as to which entity is expected to assume the risk of lesser-than-anticipated revenue.
 - b. A discussion of other risks, liabilities, and responsibilities, and which entity is expected to assume them. This must include an explanation of how those conclusions were arrived at and how the public’s interests are to be protected.
 - c. Other items determined appropriate in light of these Guidelines.
5. If an Interim Agreement will be entered, a finding and explanation that doing so is more beneficial than proceeding directly to a Comprehensive Agreement.

The County Executive must issue such findings before a Comprehensive Agreement is entered.

Project: _____

Location: _____

Private Entity submitting unsolicited proposal: _____

Or

Private Entity with which an Agreement will be entered: _____

[Finding of Public Interest]

[Information required above]

**County Executive's
Review:**

I have reviewed the appropriate documentation related to this proposal, and I do ☐ / do not ☐
approve the County's decision to proceed with the procurement as competitive sealed bids ☐
or competitive negotiations ☐ under Va. Code § 33.2-1803.1 and as outlined above.

County Executive

Date