



## BOARD OF SUPERVISORS MEETING

### SPECIAL MEETING

July 15, 2022 @ 5:30 p.m.

#### Item #

1. Call to Order
2. Closed Session: *Code of Virginia* 2.2-3711 (A)(1) – Consideration of applications for appointment 3
3. District 7 Board Vacancy 5
4. District 1 Board Vacancy 15
5. Appeal of Decision of the Board of Zoning Appeals 17
6. PPEA Interim Agreement 19

Motion to Adjourn

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**Board of Supervisors  
Agenda Summary**

**Meeting Date:** July 15, 2022  
**Item #:** 2  
**Department:** County Administration/County Attorney  
**Staff Contact:** Douglas P. Stanley /Terri Atkins Wilson  
**Agenda Item:** Closed Session

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**SUMMARY:**

**MOTION GOING INTO CLOSED SESSION**

I move that the Board of Supervisors convene in Closed Session:

1. For discussion and consideration of the applications for the appointment to fill the District 7 seat on the Board of Supervisors, pursuant to the exemptions provided for in Section 2.2-3711(A)(1), of the *Code of Virginia*.

Motion \_\_\_\_\_  
Second \_\_\_\_\_

Cooper-Jones \_\_\_\_\_  
Emert \_\_\_\_\_

Gilliam \_\_\_\_\_  
Pride \_\_\_\_\_

Stiff \_\_\_\_\_  
Townsend \_\_\_\_\_

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**Board of Supervisors  
Agenda Summary**

**Meeting Date:** July 15, 2022  
**Item #:** 3  
**Department:** Board of Supervisors  
**Staff Contact:** Douglas P. Stanley/Terri Atkins Wilson  
**Agenda Item:** Board Vacancy – District 7 (West End)

**SUMMARY:** At its June 14, 2022 reconvened meeting, the Board authorized the County Attorney to file the petition for a Writ of Election from the Prince Edward County Circuit Court for a special election to be held on November 8, 2022 and authorized County staff to advertise for applicants for an interim appointment to fill the vacancy for the District 7 (West End-Farmville) seat on the Board of Supervisors.

A public notice was advertised in The Herald (copy attached) and placed on the County’s website and Facebook page asking for any resident and qualified voter of District 7, who wishes to be considered, to complete and return a Board of Supervisors Vacancy - Citizen Application to the County Administrator’s Office by no later than 4:00 p.m. on Friday, July 8, 2022. A press release was also issued. (copy attached).

To date the County has received a total of three (3) applications for the seat. The Board will have the opportunity to discuss the applicants in a closed session at its meeting on July 15, 2022. Based on the 45-day time limit, the Board must make an appointment by July 29, 2022. If the Board desires, it could call a special meeting and interview the candidates prior to the deadline.

Upon appointment, this individual will serve on the Board of Supervisors and exercise all powers of the elected office until the Special Election to fill the vacancy is held on Tuesday, November 8, 2022 and the person so elected has qualified. Supervisor Wilck’s term of office would have ended December 31, 2025. The winner of the November 8<sup>th</sup> special election for District 7 will then serve until December 31, 2025 and could run for re-election, if they so choose.

**ATTACHMENT:** Citizen Volunteer Applications  
Public Notice  
Press Release

**RECOMMENDATION:** Make the appointment to fill the District 7 Board seat.

**SAMPLE MOTION:**

I move the Board of Supervisors appoint INSERT NAME to fill the District 7 vacancy on the Board for a term expiring November 8, 2022, or until the person so elected has qualified.

OR

I move that the Board of Supervisors table the request for further consideration.

Motion \_\_\_\_\_ Cooper-Jones \_\_\_\_\_ Gilliam \_\_\_\_\_ Stiff \_\_\_\_\_  
Second \_\_\_\_\_ Emert \_\_\_\_\_ Pride \_\_\_\_\_ Townsend \_\_\_\_\_



**CITIZEN APPLICATION  
FOR A VACANCY ON THE BOARD OF SUPERVISORS**

Date 6-24-22

Name Bruce Davis

Home Address 840 Buffalo Street

City Farmville State Virginia Zip Code 23901

Election District:	Buffalo-5	_____	Farmville-8	_____
	Hampden-4	_____	Leigh-3	_____
	Farmville-1	_____	Lockett-2	_____
	Farmville-7	<input checked="" type="checkbox"/>	Prospect-6	_____

Home # \_\_\_\_\_ Cell # 804-986-2034

E-Mail Address Chefbruce95@gmail.com

Occupation Supervisor of Food Service

Former Occupation, If Retired \_\_\_\_\_

Current Employer Prince Edward County Public Schools

Business Address 35 Eagle Drive

City Farmville State Virginia Zip Code 23901

Education: High School Bohemia Manor High School Year 1989

College/Technical School The Culinary Institute of America Year 1995

Graduate School \_\_\_\_\_ Year \_\_\_\_\_

Military Service \_\_\_\_\_ Years \_\_\_\_\_

Degrees/Other Associate in Occupational Studies

Past County Board, Commission, Committee Assignments \_\_\_\_\_

This would be my first

Professional, Civic, or Other Activities \_\_\_\_\_

See attach Document

Please state below your interest and/or reason to seek appointment to the Board of Supervisors and any special qualities that qualify you for this appointment.

See attach Document

Please share any leadership positions you have held in the past or are currently holding. \_\_\_\_\_

See Attach Document

Do you have a family member who is currently employed by the County or any Constitutional Office of the County? If yes, please explain.

No

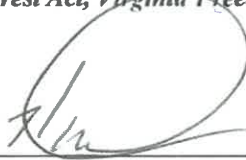
Do you have a business relationship with any County department or Constitutional Office?

No

Other information, thoughts or comments you wish to share?

I feel that I could make the board stronger and bring my passion and dedication. The citizens of Farmville District 701 and the rest of Prince Edward deserve a strong voice. I hope I am giving the chance to work with each one of you to advance the interest of all citizens of Prince Edward County.

*By submitting this application to the County of Prince Edward, I hereby certify that all information contained herein is true and complete and I consent to the dissemination of this document to the general public. If appointed, I understand that I will be required to fully comply with the requirements of the Virginia Conflict of Interest Act, Virginia Freedom of Information Act and other applicable sections of the Code of Virginia.*



Signature

6-24-22

Date

**Please Return Application To:**  
Prince Edward County Administrator's Office  
Post Office Box 382, 111 N. South Street, 3<sup>rd</sup> Floor  
Farmville, Virginia 23901  
Tel: 434-392-8837 -- FAX: 434-392-6683  
e-mail: [board@co.prince-edward.va.us](mailto:board@co.prince-edward.va.us)

**Addition Information for Vacancy for Farmville District 701 Board of Supervisor Seat**

**Professional, Civic and Other Activities Current and Past:**

Prince Edward/Farmville Youth Association, Rotary Club of Farmville, United Way of Prince Edward County, Southside Co-op Food Service Buyers Group, Department of Education's Advisory Council for Child Nutrition, Virginia Department of Agriculture and Consumer Services Advisory Council, Volunteer Baseball Coach for Prince Edward Farmville Youth Association and Prince Edward County High School, Mentor for The Culinary Institute of America, School Nutrition Association member and speaker, Virginia Cooperative Extension of Prince Edward County Leadership Council, Knights of Columbus St. Theresa Council #11678, Meals on Wheels

**Interest, Reason and Qualities to Seek Appointment:**

It would be an honor to serve the citizens of Prince Edward County and for that reason I am asking you to concern my application for the district 701 open seat. As a county we are heading in the right direction and our future is looking bright. If choosing for this position, I feel my knowledge, skills and commitment to Prince Edward County would benefit our citizens. I would love to help us move to be one of the best places to live and work.

Through my 23 years of been a resident of Prince Edward County, I have shown my ability to lead and work beside other members of the community. I am the type of leader that believes in partnering with other community organizations to strength our community in which we live in. I have a passion of seeing the best for our young citizens that they will success so they can be the next set of leaders. I am able to listen to both side of the issues and make decisions that are the best for our citizens.

**Leadership Positions Past and Currently Holding:**

Prince Edward/Farmville Youth Association 20-year board member and vice president, director of baseball and coach  
Rotary Club Taste of Farmville Co-Chair  
United Way of Farmville- Duck Derby Chair  
Southside Co-op- President which oversee the procurement for 25 school district across the State of Virginia





**CITIZEN APPLICATION  
FOR A VACANCY ON THE BOARD OF SUPERVISORS**

Date July 8, 2022

Name Peter Gur

Home Address 1813 Woodland Trail

City Farmville State Virginia Zip Code 23901

Election District:	Buffalo-5	_____	Farmville-8	_____
	Hampden-4	_____	Leigh-3	_____
	Farmville-1	<u>X</u>	Lockett-2	_____
	Farmville-7	_____	Prospect-6	_____

Home # (434) 391-1082 Cell # (434) 547-0976

E-Mail Address petergur@msn.com

Occupation School Board Member

Former Occupation, If Retired High School Science Teacher

Current Employer Prince Edward County School Division

Business Address 35 Eagle Drive

City Farmville State Virginia Zip Code 23901

Education: High School	<u>Chung-Kung HS, Taipei, Taiwan</u>	Year	<u>1971</u>
College/Technical School	<u>Soochow University, Taipei, Taiwan</u>	Year	<u>1975</u>
Graduate School	<u>Michigan State University, Ph.D.</u>	Year	<u>1987</u>
Military Service	_____	Years	_____
Degrees/Other	<u>University of Virginia, MAPE</u>		<u>2007</u>

Past County Board, Commission, Committee Assignments \_\_\_\_\_

Prince Edward County School Division, School Board

Professional, Civic, or Other Activities American Chemical Society, Member

Heart of Virginia Master Gardeners (HOVMG), FACES Food Pantry,

Friends of Farmville-Prince Edward Library.

Please state below your interest and/or reason to seek appointment to the Board of Supervisors and any special qualities that qualify you for this appointment.

Farmville is America's first two-college town, and its public schools were closed in 1959. I would like to make the local businesses prosperous and improve the public-school's academic achievements.

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Please share any leadership positions you have held in the past or are currently holding. \_\_\_\_\_

1. I supervised Superintendent Dr. Barbara Johnson.

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2. After Delegate James E. Edmund submitted HB 63, I met with his assistant at his office. I thanked Del Edmund for help the PE School Division renovating the PE Elementary School.

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3. When the Friends of Library needed to find a place for a new Free Mini Library site in Meherrin, Board of Supervisor Jerry R. Townsend helped us find Rick's Mini Mart as the right site. We also held a "Grand Re-Opening" ribbon cutting event on Saturday, April 30, 2022.

Do you have a family member who is currently employed by the County or any Constitutional Office of the County? If yes, please explain.

— No —

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Do you have a business relationship with any County department or Constitutional Office?

— No —


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Other information, thoughts or comments you wish to share?

The then Virginia Governor Ralph Northern invited me to attend the 2021 Asian American and Pacific Islander Heritage Month on September 22, 2021. I was very amazed to see Miss Barbara Rose Johns' drawing was hanging at the Virginia Executive Mansion's main hallway. I would like to make Prince Edward County a more perfect place to live.

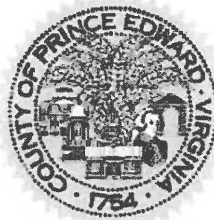
*By submitting this application to the County of Prince Edward, I hereby certify that all information contained herein is true and complete and I consent to the dissemination of this document to the general public. If appointed, I understand that I will be required to fully comply with the requirements of the Virginia Conflict of Interest Act, Virginia Freedom of Information Act and other applicable sections of the Code of Virginia.*

 July 8, 2022

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Signature Date

**Please Return Application To:**  
Prince Edward County Administrator's Office  
Post Office Box 382, 111 N. South Street, 3<sup>rd</sup> Floor  
Farmville, Virginia 23901  
Tel: 434-392-8837 -- FAX: 434-392-6683  
e-mail: [board@co.prince-edward.va.us](mailto:board@co.prince-edward.va.us)



**CITIZEN APPLICATION**  
FOR A VACANCY ON THE BOARD OF SUPERVISORS

Name Brett Von Cannon Watson Date 6/10/2022

Home Address 713 Second Ave  
City Farmville State VA Zip Code 23901

Election District: Buffalo-5 \_\_\_\_\_ Farmville-8 \_\_\_\_\_  
Hampden-4 \_\_\_\_\_ Leigh-3 \_\_\_\_\_  
Farmville-1 \_\_\_\_\_ Lockett-2 \_\_\_\_\_  
Farmville-7  Prospect-6 \_\_\_\_\_

Home # 434-392-1046 Cell # 434-547-6243

E-Mail Address cannonradio@gmail.com

Occupation Financial Adviser

Former Occupation, If Retired \_\_\_\_\_

Current Employer Davenport + Company LLC

Business Address 101 N. Main St.

City Farmville State VA Zip Code 23901

Education: High School Prince Edward Academy Year 1986

College/Technical School Univ North Carolina Year 1990

Graduate School \_\_\_\_\_ Year \_\_\_\_\_

Military Service \_\_\_\_\_ Years \_\_\_\_\_

Degrees/Other BA International Studies

Past County Board, Commission, Committee Assignments Prince Edward Planning Commission (current)

Professional, Civic, or Other Activities Past President of Rotary Club of Farmville, Past board member of Downtown Farmville

Please state below your interest and/or reason to seek appointment to the Board of Supervisors and any special qualities that qualify you for this appointment.

I am a native and nearly lifelong resident of the county and care about its success deeply. My financial + planning commission experience should be helpful.

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Please share any leadership positions you have held in the past or are currently holding.

Have many projects as president and longtime board member  
of our local Rotary Club.

Do you have a family member who is currently employed by the County or any Constitutional Office of the County? If yes, please explain.

No

Do you have a business relationship with any County department or Constitutional Office?

Our firm does municipal finance work on behalf of  
the county but I have no duties or expertise in  
that side of our company.


Other information, thoughts or comments you wish to share?

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*By submitting this application to the County of Prince Edward, I hereby certify that all information contained herein is true and complete and I consent to the dissemination of this document to the general public. If appointed, I understand that I will be required to fully comply with the requirements of the Virginia Conflict of Interest Act, Virginia Freedom of Information Act and other applicable sections of the Code of Virginia.*

  
Signature

6-10-2022  
Date

**Please Return Application To:**

Prince Edward County Administrator's Office  
Post Office Box 382, 111 N. South Street, 3<sup>rd</sup> Floor  
Farmville, Virginia 23901  
Tel: 434-392-8837 -- FAX: 434-392-6683  
e-mail: [board@co.prince-edward.va.us](mailto:board@co.prince-edward.va.us)



Please publish in the Wednesday, June 22, 2022 and Friday, July 1, 2022 editions of The Farmville Herald.



**NOTICE TO THE CITIZENS OF  
DISTRICT 7 - FARMVILLE  
PRINCE EDWARD COUNTY, VIRGINIA**

Pursuant to Virginia Code Section 24.2-228, the Prince Edward County Board of Supervisors will begin the process of filling the vacant seat on the Board of Supervisors. The seat represents District 7 – Farmville which became vacant effective June 14, 2022, following the resignation of Supervisor Jim Wilck. Only qualified voters of District 7 – Farmville can be considered to fill this vacancy.

Any resident and qualified voter of District 7 - Farmville, who wishes to be considered, must complete and return a Board of Supervisors Vacancy - Citizen Application to the County Administrator's Office by **no later than 4:00 p.m. on Friday, July 8, 2022**. Applications are available on the County website at [www.co.prince-edward.va.us](http://www.co.prince-edward.va.us) or from the County Administrator's Office, Prince Edward County Courthouse, 111 N. South Street, 3<sup>rd</sup> Floor, Farmville, Virginia 23901. Applications received after the established deadline shall not be considered. For additional information or questions, please contact the Prince Edward County Administrator's Office at (434) 392-8837.



## County of Prince Edward, Virginia

### News Release – June 17, 2022

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Contact: Douglas P. Stanley, County Administrator  
[dstanley@co.prince-edward.va.us](mailto:dstanley@co.prince-edward.va.us)  
Office: (434) 392-8837

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#### BOARD TO FILL DISTRICT 7-FARMVILLE VACANCY

#### *Appointee Will Hold Seat Until November Special Election*

**Prince Edward County, VA** -- The resignation of Supervisor Jim Wilck on June 14, 2022 has created a vacancy on the Prince Edward County Board of Supervisors for the District 7 - Farmville seat. In accordance with Section 24.2-228 of the *Code of Virginia*, the County Board of Supervisors is authorized to appoint a qualified voter of the election district to fill the vacancy.

The Board of Supervisors has established a process which invites qualified voters of District 7 – Farmville to apply for the vacancy. A “qualified voter” is generally defined as a person who is entitled to vote pursuant to the Constitution of Virginia and who is: (i) 18 years of age on or before the day of the election, (ii) a resident of the Commonwealth and of the precinct in which he/she offers to vote, and (iii) a registered voter. Please refer to Section 24.2-101 of the *Code of Virginia* for the legal definition of qualified voter in its entirety.

Only qualified voters of District 7 – Farmville shall be considered to fill this vacancy. If a citizen is unsure if he/she is a qualified voter of District 7 – Farmville, they should call the County Voter Registrar’s office at 434-392-4767 or stop by the office located on the second floor of the Prince Edward County Courthouse.

Qualified voters who wish to be considered for the vacancy must return a Board of Supervisors Vacancy - Citizen Application to the Prince Edward County Administrators Office **by not later than 4:00 p.m. on Friday, July 8, 2022**. Applications are available on the County’s website at [www.co.prince-edward.va.us](http://www.co.prince-edward.va.us) or may be obtained in the office of the County Administrator. Applications may be returned by email to [board@co.prince-edward.va.us](mailto:board@co.prince-edward.va.us); by mail to Prince Edward County, P.O. Box 382, Farmville, VA 23901; or hand-delivered to the County Administrator’s Office located at 111 N. South Street, 3<sup>rd</sup> Floor, Farmville, VA. Applications received after the established deadline will not be considered. Applicants are strongly encouraged to provide answers to each question on the application.

The Board of Supervisors will review the applications, may conduct interviews, and will then select a qualified voter of District 7 – Farmville to fill the vacancy. Upon appointment, this individual will serve on the Board of Supervisors and exercise all powers of the elective office until the Special Election to fill the vacancy is held on Tuesday, November 8, 2022 and the person so elected has qualified.

For additional information, please contact the Prince Edward County Administrator’s Office at 434-392-8837.

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**Board of Supervisors  
Agenda Summary**

**Meeting Date:** July 15, 2022  
**Item #:** 4  
**Department:** Board of Supervisors  
**Staff Contact:** Douglas P. Stanley/Terri Atkins Wilson  
**Agenda Item:** Board Vacancy – District 1 (Farmville)

**SUMMARY:** As the Board is aware, District 1 Supervisor Beverly M. Booth, has tendered her resignation from the Board of Supervisors effective July 5, 2022 at 9:00 a.m. for health reasons. If the Board of Supervisors wishes to fill the vacancy for the District 1-Farmville Board seat, the Code of Virginia requires that a petition for a special election be filed with the Circuit Court within fifteen (15) days of the creation of the vacancy (**by July 20, 2022**). The appointment to fill the vacancy until the special election can be held must be made within 45 days (**by August 19, 2022**).

Supervisor Booth’s term of office would have ended December 31, 2023. The individual elected in the special election for District 1 will serve until December 31, 2023 and is then eligible to run for re-election, if they so choose.

In order to file a petition with the Circuit Court, it requires a motion and an affirmative vote of the Board of Supervisors to request a special election to fill the vacancy created by the resignation of Supervisor Booth and to conduct the special election with the general election on November 8, 2022. Thirdly, it requires the County Attorney to prepare and file with the Circuit Court a petition for a special election that sets forth those facts as well as prepare a Writ-of-Election to be endorsed by the Judge and entered as an Order of the Court.

The Board may appoint someone to fill the vacancy in the interim. If a majority of the remaining members of the Board cannot agree, or do not act, the judges of the Circuit Court of the County may make the appointment. If agreeable, I would also ask that the Board authorize County staff to advertise for applicants for the interim appointment.

**ATTACHMENT:**

**SAMPLE MOTION:**

I move that the Board of Supervisors request a special election to be held, to fill the vacancy on the Board of Supervisors for District 1-Farmville, and that the special election be held in conjunction with the General Election on November 8, 2022, to authorize the County Attorney to file the petition and see a Writ of Election from the Prince Edward County Circuit Court for a special election to be held on November 8, 2022, and that the Board authorize County staff to advertise for applicants for an interim appointment for the District 1 seat.

OR

I move that the Board of Supervisors table the request for further discussion.

Motion \_\_\_\_\_ Cooper-Jones \_\_\_\_\_ Gilliam \_\_\_\_\_ Stiff \_\_\_\_\_  
Second \_\_\_\_\_ Emert \_\_\_\_\_ Pride \_\_\_\_\_ Townsend \_\_\_\_\_

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**Board of Supervisors  
Agenda Summary**

**Meeting Date:** July 15, 2022  
**Item #:** 5  
**Department:** Board of Supervisors  
**Staff Contact:** Douglas P. Stanley/Terri Atkins Wilson  
**Agenda Item:** Appeal of Decision of the Board of Zoning Appeals

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**SUMMARY:**

**ATTACHMENT:** Correspondence

**SAMPLE MOTION:**

I move that the Board of Supervisors direct legal counsel to file and pursue an appeal to the Prince Edward County Circuit Court of the June 21, 2022 decision of the Board of Zoning Appeals in the Bowman matter.

OR

I move that the Board of Supervisors table the request for further discussion.

Motion \_\_\_\_\_  
Second \_\_\_\_\_

Cooper-Jones \_\_\_\_\_  
Emert \_\_\_\_\_

Gilliam \_\_\_\_\_  
Pride \_\_\_\_\_

Stiff \_\_\_\_\_  
Townsend \_\_\_\_\_

Board of Zoning Appeals

James (Jim) Davis  
Russell Dove  
Paul Hoffman  
John Prengaman  
John F. Townsend III



COUNTY OF PRINCE EDWARD, VIRGINIA

Director of Planning and  
Community Development

Robert Love

Post Office Box 382  
111 N. South Street, 3<sup>rd</sup> Floor  
Farmville, VA 23901

Office: (434) 392-8837  
Fax: (434) 392-6683

rlove@co.prince-edward.va.us  
www.co.prince-edward.va.us

June 27, 2022

Carolyn F. & Corbett W. Bowman  
3205 Green Bay Road  
Green Bay, VA 23942

Dear Ms. Bowman,

This is to inform you that on June 21, 2022, the Board of Zoning Appeals affirmed your appeal, reversing my determination as the Prince Edward County Assistant Zoning Administrator dated April 11, 2022. My determination stated that the flagpole erected without a zoning permit in violation of Prince Edward County Code Section 5-104 which requires a zoning permit for structures. My determination also indicated that the flagpole was further in violation of the Zoning Ordinance regulations as both an unauthorized accessory use in the C1 District, and a structure exceeding the allowable height limitation of twenty-five (25) feet for accessory structures. However, the BZA reversed this determination based upon the vesting provision in Va. Code § 15.2-2311(C).

Please note that the BZA decision can be appealed within thirty (30) days from the date of decision to the Circuit Court of Prince Edward County pursuant to Section 15.2-2314 of the Code of Virginia, as amended.

Respectfully,

Robert Love  
Director of Planning and Community Development



**Board of Supervisors  
Agenda Summary**

**Meeting Date:** July 15, 2022  
**Item #:** 6  
**Department:** Board of Supervisors  
**Staff Contact:** Douglas P. Stanley/Terri Atkins Wilson  
**Agenda Item:** PPEA Project Interim Agreement: Authorize Public Hearing & Public Input Period

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**Summary:**

On December 9, 2021 the Prince Edward County Board of Supervisors accept the unsolicited proposal of Prince Edward County Infrastructure, LLC (PECI) for the design and construction of a water system serving the County; and further move the Board make a determination to use competitive negotiation in selecting a contractor; and to authorize the County Administrator to post the non-confidential portions of the proposal and advertise for the receipt of competing proposals for a period of not less than 45 days. The County received no competing proposals.

Since that time, County staff and our selected consultants have been negotiating an interim agreement with Peci for the development, design and construction of water treat plant and distribution system (see attachment) consistent with the Design-Builder’s proposal and the County’s guidelines and procedures concerning the Public-Private Education facilities and Infrastructure Act of 2002 as adopted on July 8, 2008.

Per Section IX.C of the County’s guidelines 30 days prior to entering into an interim agreement the County shall provide an opportunity for public comment. Such public comment shall include a Public Hearing held by the Board of Supervisors.

Staff has considered the Proposal and has determined in the interest of developing a water supply system it is in the best interest of the County to proceed and established the 30-day period for public comment. The draft interim agreement has been reviewed by our PPEA Legal Counsel – Sharon Pandek (Pandek & Taves, PLLC) and our Engineering consultant – Tom Frederick (Pennoni Engineering). Based on their input a number of changes have been made. As currently written the County will be responsible for up to \$1 million of design cost of the project if the project does not move forward to construction. One of the issues with the 2009 project effort was the concern that the County spent over \$2 million with Crowder Construction to advance the PPEA. Not all of the work was deemed “throw away” and helped with the current project effort. We have worked to try to limit the exposure to the extent possible for the County on this latest effort.

Motion \_\_\_\_\_  
Second \_\_\_\_\_

Cooper-Jones \_\_\_\_\_  
Emert \_\_\_\_\_

Gilliam \_\_\_\_\_  
Pride \_\_\_\_\_

Stiff \_\_\_\_\_  
Townsend \_\_\_\_\_



**Board of Supervisors  
Agenda Summary**

**Attachments:**

- Interim Agreement
- PPEA Guidelines & Procedures

**Recommendation:**

Accept the interim agreement for the purposes of posting for public comment as specified in the County's Guidelines and authorize a public hearing to be held on August 23, 2022 to receive comments.

**SAMPLE MOTION:**

I move that the Board of Supervisors accept the Interim Agreement for the purposes of posting for the 30-day comment period and to authorize a public hearing to receive public comment on the interim agreement for August 23, 2022, in accordance with the County's PPEA Guidelines.

OR

I move that the Board of Supervisors table the request for further discussion.

Motion \_\_\_\_\_  
Second \_\_\_\_\_

Cooper-Jones \_\_\_\_\_  
Emert \_\_\_\_\_

Gilliam \_\_\_\_\_  
Pride \_\_\_\_\_

Stiff \_\_\_\_\_  
Townsend \_\_\_\_\_

**INTERIM AGREEMENT  
SANDY RIVER WATER TREATMENT & DISTRIBUTION PROJECT**

**THIS INTERIM AGREEMENT** (this "Interim Agreement" or "Agreement"), is entered into as of \_\_\_\_\_, 2022, (the "Effective Date"), between the:

THE COUNTY OF PRINCE EDWARD, VIRGINIA, a political subdivision of the Commonwealth of Virginia (the "Owner" or the "County"), and PRINCE EDWARD COUNTY INFRASTRUCTURE, LLC, a Virginia limited liability company ("Design-Builder" or "PECI"), licensed to perform construction contracting in Virginia. PEGI is a joint venture of MEB General Contractors, Inc. and Faulconer Construction Company, Inc., and PEGI will subcontract work under this Agreement to them.

The County and Design-Builder are referred to individually as a "Party " and collectively as "the Parties.

**RECITALS:**

1. On July 8, 2008, the County enacted "Guidelines and Procedures," implementing the Public-Private Education Facilities and Infrastructure Act of 2002 (Va. Code §56-575.1, *et seq.*) ("PPEA"), and establishing procedures for the development of public facilities through public-private partnerships ("Guidelines").
2. On or about November 22, 2021, the County received an unsolicited proposal ("Proposal" or "Conceptual Phase Proposal") from Design-Builder the PPEA to develop, design and construct the Sandy River Reservoir Water Treatment and Distribution Project ("Project"). For the purposes of this Interim Agreement, the term "Private Entity" as utilized in the PPEA shall be Design-Builder/PECI.
3. Pursuant to the Guidelines, the County subsequently posted notice of and advertised, its decision to accept Design-Builder's Proposal for conceptual stage consideration.
4. On or about December 9, 2021, the County Board of Supervisors, finding that it would be advantageous for the County to proceed with the Project (as defined below) using procedures for competitive negotiation, rather than sealed, competitive bids, given the probable scope, complexity and urgency of the Project, voted to accept the proposal for publication and conceptual stage consideration and caused the County Administrator to advertise for competing proposals.
5. On or about December 15, 2021, the County elected to solicit for consideration, competing proposals for the Project, in accordance with the PPEA and the Guidelines. No competing proposals were submitted within the time period established for receipt of same.
6. On or about December 9, 2021, the County selected Design-Builder for negotiation of interim and comprehensive agreements for the development, design

and construction of the Project, all in accordance with the PPEA and the Guidelines.

7. The Parties have negotiated this Interim Agreement consistent with the PPEA, the Guidelines, other law, Design-Builder's Proposal, and discussions between representatives of the County and Design-Builder, the terms and conditions of which are set out in this Agreement.
8. Having considered Design-Builder's Conceptual Phase Proposal and other information, the County has determined that it is in the best interest of the County and the public purposes of the PPEA to authorize Design-Builder to commence preparation of the Detailed Phase Proposal and to perform certain tasks in accordance with the following terms and conditions.

NOW THEREFORE, for and in consideration of the mutual promises, conditions, and covenants herein set forth, the Parties agree as follows:

1. **Incorporation of Recitals.** The foregoing recitals are true and correct and are incorporated herein by reference.
2. **Definitions.** The following definitions apply to this Agreement. Capitalized Terms not defined herein shall have the meanings as defined in the PPEA, the Guidelines and Design-Builder's Conceptual Phase Proposal.
  - a. "Interim Agreement Price" means the amount that the County will be obligated to pay the Design-Builder as stated at Article 7 of this Agreement.
  - b. "Project" means the design, development and construction of the Sandy River Reservoir Water Treatment and Distribution Project as contemplated by the Proposal. "Project" includes both the entirety of the Project or a part thereof as agreed to by the Parties.
  - c. "Proposal" means Design-Builder's Conceptual Phase Proposal, dated November 22, 2021.
  - d. "Site" means the anticipated location of all facilities, utilities, roads, and other improvements to be designed and constructed as part of the Project, including any necessary ancillary easements or interests in property necessary for such construction.
  - e. "Services" or "IA Services" means the services to be provided by the Design-Builder under this Interim Agreement as described in Exhibit A, Section 1 "Interim Agreement Design and Engineering Services to be performed by Designer for Design-Builder".
3. **Design-Builder's Responsibilities.**

- a. Design-Builder shall perform all Services set forth in Exhibit A, Section 1 entitled "Interim Agreement Services" (the "Services").
  - b. Design-Builder shall procure and maintain insurance in accordance with Exhibit B.
4. **County's Responsibilities.** The County, as Owner of the Project, shall perform the following functions under this Interim Agreement:
- a. Procure and maintain insurance in accordance with Exhibit B.
  - b. Furnish any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Project Site.
  - c. Furnish or otherwise make available existing Project-related information and data as is reasonably requested by Design-Builder to enable it to complete its Engineering Services. Such information or data may include the following:
    - i. Zoning, deed, and other land use restrictions;
    - ii. Known and reasonably available existing data prepared by others, including, without limitation, explorations and tests of subsurface conditions at or contiguous to the Site, Drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site, or hydrographic surveys, with appropriate professional interpretation thereof; and
    - iii. Known and available existing environmental assessments, audits, investigations, and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas.
  - d. Give prompt written notice to Design-Builder whenever Owner observes or otherwise becomes aware of any development that affects the scope or time of performance or furnishing of Design-Builder's services, or any defect or nonconformance in Design-Builder's services.
  - e. Furnish, as agreed to by the Parties, other services or provide written authorization to Design-Builder to provide required Services Not Included as set forth in Exhibit A.
  - f. Arrange for timely access, including any required advanced written notices, for Design-Builder and Design-Builder's subconsultants to enter upon public and private property as may reasonably be required for Design-Builder to perform services under the Agreement. This does not relieve the Design-Builder of its responsibility for safety with its own activities.

- g. Examine all alternate solutions, studies, reports, sketches, drawings, specifications, proposals, and other documents presented by Design-Builder (including obtaining advice of an attorney, insurance counselor, and other consultants as Owner deems appropriate with respect to such examination) and render in writing any PECEI-requested decisions pertaining thereto within fourteen (14) days or other mutually agreeable time after receipt of the documents to be examined.
- h. Obtain reviews, approvals, agreements, and permits from all governmental authorities having jurisdiction over the Project or from such others as may be necessary for completion of each Phase of the services in this Agreement.
- i. Provide, as required for the Project:
  - i. Accounting, bond, financial advisory, and insurance consultant services as deemed needed by Owner for the Project;
  - ii. Legal services with regard to the Project as needed by Owner, or as Design-Builder reasonably requests and Owner agrees.
- j. Advise Design-Builder of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services with regard to the Project, including, but not limited to, cost estimating, Project peer review, value engineering, and constructability review, when necessary for the Design-Builder to perform its work under this Agreement. Notwithstanding the foregoing, no advice or disclosure of the identity of, or communications with, Owner's counsel shall be required.
- k. Additional Owner responsibilities:
  - i. Coordinate meetings with state and other local government agencies, and potential wholesale customers as needed.
  - ii. Perform all public involvement services.
  - iii. Provide and pay for all third-party reviews of the preliminary design and engineering services as needed by Owner.
  - iv. Costs associated with any hazardous material remediation.
  - v. Costs associated with any railroad agreements or permits.
  - vi. Costs associated with obtaining agreement of state agencies or governmental agencies or property owners for access rights or easements.
  - vii. Review and approve assumptions and projections for rates, fees, number of users, projected revenue, and cost sharing information to be used in the financial model prior to completion of Study Phase.

5. **Interpretation and Intent.**

- a. Terms, words and phrases used in this Interim Agreement shall have the meanings given them in this Agreement and the Proposal.



- b. This Interim Agreement forms the entire Agreement between Owner and Design-Builder. No oral representations or other agreements have been made by the Parties except as specifically stated in the Interim Agreement.
- c. Execution of this Interim Agreement shall not bind the County to engage or retain Design-Builder for any additional services through a subsequent Interim Agreement, a Comprehensive Agreement, or any other contract.

6. **Interim Agreement Price and Payments.**

- a. Interim Agreement Price. Owner shall pay Design-Builder as set forth below for the Services described in Exhibit A.
- b. Progress Payments.
  - i. Owner shall pay Design-Builder for the Services set forth in Exhibit A, including all related expenses, a Lump Sum of \$1,000,000 (“the Interim Agreement Price”) allocated as follows:

--- See next page ---

## Sandy River Water Treatment and Distribution Project

<b>Support Services – Interim Agreement</b>	<b>Intake and Water Treatment Plant</b>	<b>Eastern System to Nottoway Co Line</b>	<b>Western System to Hampden-Sydney</b>	<b>Project Totals</b>	<b>Comment</b>
Topographic Survey	\$5,000	\$60,000	\$45,000	\$110,000	Aerial Topo, 1' contouring
Geotechnical Drilling	\$35,000		\$5,000	\$40,000	Raw PS, WTP, HDD & Booster PS
Geotechnical Laboratory	\$10,000			\$10,000	
Geotechnical Coordination & Report	\$15,000			\$15,000	
Environmental Delineation & Confirmation		\$35,000	\$45,000	\$80,000	Treatment Plant Site Included in VWP permit.
Subsurface Utility Engineering (SUE)	\$5,000	\$5,000	\$35,000	\$45,000	
<b>Total Support Services</b>				<b>\$300,000</b>	
<b>Study and Report Phase Services – Timmons Group</b>	\$100,000	\$50,000	\$50,000	<b>\$200,000</b>	
<b>Preliminary Design Phase Services (15%) – Timmons Group</b>	\$150,000	\$50,000	\$50,000	<b>\$250,000</b>	
<b>Preconstruction Services – MEB and Faulconer</b>				<b>\$250,000</b>	
<b>Total Interim Agreement Phase Services</b>				<b>\$1,000,000</b>	

- ii. The Interim Agreement Price includes compensation for Design-Builder's Services and services of Design-Builder's Subcontractors and consultants, if any.
- iii. The portion of the Interim Agreement Price billed each month will be based upon Design-Builder's estimate of the percentage of the total Services completed during the billing period. Each invoice shall include a summary of Work completed and status of the total Work as a validation of estimated Services Completed.
- iv. Design-Builder shall submit to Owner on the fifth (5th) day of each month after execution of this Interim Agreement, Design-Builder's Application for Payment. The Schedule of Values upon which the Applications for Payment will be based shall be submitted to Owner within five (5) days after notice to proceed and shall be in the form and level of detail required by Owner and reasonably acceptable to Design-Builder.

- v. Owner shall make payment, without retainage, within thirty (30) days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with Article 7.b of this Interim Agreement, but in each case less the total of payments previously made.

**7. Schedule.**

- a. The Design-Builder shall complete performance of all Services within 90 days of the execution by both Parties of this Interim Agreement. ("Interim Agreement Schedule" or "Schedule"). The County and Design-Builder shall use their best efforts to maintain the Interim Agreement Schedule which can be modified by mutual written agreement of the Parties as circumstances warrant.
- b. Owner and Design-Builder agree that the Schedule is a best estimate of the time required for various Services, and may be adjusted, modified and extended as required due to future occurrences and exigencies that are outside of the control of the Owner and/or Design-Builder by agreement of the Parties.
- c. No actual or liquidated damages are assessable against Design-Builder for failure to accomplish the Services to be provided in this Interim Agreement in accordance with the Schedule.

**8. Limitation of Design-Builder's Liability.**

- a. The designs, reports, estimates, instruments of service, or any other deliverables, data, or information ("IA Work Product") provided by Design-Builder to Owner pursuant to this Interim Agreement are intended for use in connection with the negotiation of a Comprehensive Agreement between Owner and Design-Builder for the design and construction of the Project. Design-Builder disclaims any and all warranties, express or implied, of the IA Work Product for any use by Owner not in accordance with this limited purpose. Owner hereby releases Design-Builder, its Designer, and all of their subcontractors and consultants, from any liability in connection with the use of by the County of the IA Work Product for any other purpose.
- b. For any claims not included within the foregoing release from liability, to the fullest extent permitted by law, and notwithstanding any other provision of this Interim Agreement, the total liability, in the aggregate, of Design-Builder and Design-Builder's officers, directors, partners, employees, agents, subcontractors, consultants, and any of them, to Owner and anyone claiming by, through, or under Owner, for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Services included in this Agreement, or the Services, from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, or breach of contract or warranty (express or implied) of Design-Builder or Design-Builder's officers, directors, partners, employees, agents, or Subcontractors, or any of them, shall not exceed the greater of: (i) the proceeds of any coverage, net of

deductibles or self-insured retention, actually available to the Owner from insurance policies required to be provided by the Design-Builder under this Agreement, or (ii) the total compensation received by Design-Builder under this Agreement.

- c. The limitations on Design-Builder's liability and on damages set forth in this Article A.4 shall have no force and effect if Design-Builder and Owner enter into a Comprehensive Agreement for the design and construction of the Project; in such case the terms of the Comprehensive Agreement shall establish the contractual limitations, if any, on Design-Builder's liability and damages.

9. **Exclusion of Special, Incidental, Indirect and Consequential Damages.** To the fullest extent permitted by law, and notwithstanding any other provision in the Agreement, neither Owner nor Design-Builder or its officers, employees, subcontractors, and consultants, shall be liable to one another or anyone claiming by, through, or under any of them, for any special, incidental, indirect, or consequential damages whatsoever arising out of, resulting from or in any way related to Services included in this Agreement, from any cause or causes, including but not limited to any such damages caused by the ordinary negligence, gross negligence, professional errors or omissions, strict liability, breach of contract, or breach of warranty (express or implied) of Design-Builder or Design-Builder's officers, directors, partners, employees, agents, subcontractors, or consultants, or any of them.

10. **Negotiation of Comprehensive Agreement.**

- a. If, at the sole election of the County, the County decides to proceed with the Project and enter a Comprehensive Agreement with Design-Builder, the Parties will commence negotiations on the terms of the Comprehensive Agreement at the conclusion of the Study and Report Phase of the Interim Agreement Services.
- b. Under the Comprehensive Agreement, the Design-Builder will design and construct the facilities ("the Work") and be compensated in the form of a lump sum Price for the Work.
- c. It is the intention of the Parties that the terms of the Comprehensive Agreement will substantially incorporate the terms of the DBIA 525 Owner-Design-Builder Agreement – Lump Sum, and the DBIA 535 General Terms and Conditions, with any amendments and appropriate attachments to be developed and agreed to by the Parties. In addition, the Comprehensive Agreement will substantially incorporate the following additional terms and conditions:
  - i. Design-Builder shall enter the Comprehensive Agreement in its corporate capacity. The County acknowledges the Design-Builder is a Joint Venture of two licensed contractors, each bringing special experience and expertise for the overall benefit of the Project, and further acknowledges Design-Builder's intent to utilize consultants, sub-consultants and other entities identified in the Proposal. Design-Builder shall not substitute another entity for the services to

be performed by Timmons Group Inc. (“Designer”) as described in the proposal without the County's prior written approval.

- ii. Economic Price Adjustment Provisions. In consideration of the volatile markets for certain materials and equipment, the Parties agree to negotiate, as part of the Comprehensive Agreement, appropriate Economic Price Adjustment provisions providing an equitable adjustment to the Contract Price to account for changes in prices for designated materials or equipment between the negotiation of the Comprehensive Agreement and the date of purchase. The list of such materials will be finalized in the Comprehensive Agreement.
  - iii. The costs of all permits shall be paid directly by the Owner.
  - iv. Owner will pay the cost for any utility connections fees to new plant facilities (i.e., Dominion Power, Verizon, etc.)
  - v. Owner will provide all land, and interests in lands (to include easements and rights of way), necessary for construction of the Project.
- d. Design-Builder acknowledges that the County is prohibited by law from undertaking any indemnity obligations to Design-Builder.

**11. Stop Work and Termination for Cause.**

- a. County's Right to Stop Work. The County may, without cause and for its convenience, order Design-Builder in writing to stop and suspend the Services. Such suspension shall not exceed ninety (90) consecutive days, unless the Parties agree to further extend said suspension
- b. County's Right to Terminate for Cause.
  - i. If Design Builder persistently fails to (i) provide a sufficient number of design professionals; (ii) perform the Services with promptness and diligence to ensure that the Services are completed in accordance with the Interim Agreement and Agreement Schedule; or if Design-Builder (i) becomes insolvent; (ii) makes a general assignment for the benefit of its creditors; (iii) commences or consents to any action seeking reorganization, liquidation or dissolution under any law relating to bankruptcy or relief of debtors; or (iv) commences or consents, to any action seeking appointment of a receiver or trustee for itself or its assets, then the County, shall have the rights set forth in Article 12.b.ii below.
  - ii. Upon the occurrence of an event set forth in Article 12.b.i above, the County may provide written notice to Design-Builder that it intends to terminate the Interim Agreement unless the problem cited is cured, or reasonably commenced to be cured, within 30 days of Design-Builder's receipt of such

notice. If Design-Builder fails to cure, or reasonably commence to cure, such problem, then the County may declare the Agreement terminated for default by providing written notice to Design-Builder of such declaration. In such case, Design-Builder shall not be entitled to receive any payment until the Services are complete. If the unpaid balance due Design-Builder under this subparagraph exceeds all direct costs, losses, and damages sustained by the County in completing the Services (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or other dispute resolution costs), such excess will be paid to Design-Builder. If such costs, losses and damages exceed such unpaid balance, Design-Builder shall pay the difference to the County.

- c. Design-Builder's Right to Terminate for Cause. Upon the County's failure to make payments in accordance with the provisions hereof unless the County has notified the Design-Builder of a problem under subparagraph b above, Design-Builder may, upon thirty (30) days written notice, terminate its obligation to provide further services.
12. **Termination for Convenience.** Upon seven (7) days written notice to Design-Builder, the County may, for its convenience and without cause, elect to terminate this Interim Agreement. In such event, the County shall pay Design-Builder for the following:
    - a. All Services executed at the time of the notice of termination in connection with the Interim Agreement in accordance with the payment terms of the Interim Agreement.
  13. **Standard of Care:** Design-Builder agrees that the standard of care for all professional design services performed under this Interim Agreement shall be the care and skill ordinarily used by members of the design profession in the Commonwealth of Virginia practicing on similar projects at the same time.
  14. **Resolution of Disputes, Claims and Other Matters.** Disputes, claims and other matters in question between the Parties under the Interim Agreement shall only be resolved as follows:
    - a. The Parties shall first endeavor to resolve any disputes, claims or other matters in question between them through direct negotiations, and if such direct negotiations fail, by non-binding mediation, with the site of the mediation being the County of Prince Edward, Virginia, which is agreed to be the sole and exclusive venue. Such mediation may be requested by either Party by written request provided to the other Party. Thereafter the Parties shall, by mutual agreement, select a mediator, and such mediation shall be held within sixty (60) days of the written demand.
    - b. Should the dispute, claim, or other matter in question remain unresolved for the shorter of (i) a thirty (30) day period following completion of negotiation and a mediation (if requested), or (ii) more than ninety (90) days after mediation is requested by a Party, either Party may proceed in accordance with subparagraph 15(c) below.

- c. If the procedures of subparagraph 15(a) have been followed, but, more than ninety (90) days have passed since a Party has requested mediation, and the dispute, claim or matter in question remains unresolved, then either Party may institute a lawsuit in the Circuit Court of the County of Prince Edward, Virginia, and may pursue all available appeals in Virginia state courts, to the extent they have jurisdiction.
- d. Nothing in paragraphs (a) through (c) shall prevent a Party from seeking temporary injunctive or other temporary equitable relief in the Circuit Court of the County of Prince Edward, Virginia, if circumstances so warrant.
- e. In the event of any dispute, claim, or other matter in question arising, unless terminated by the County, Design-Builder shall continue its performance diligently during its pendency as if no dispute, claim or other matter in question had arisen. Unless Design-Builder has been terminated or suspended, during the pendency of any dispute in connection with the payment of moneys, Design-Builder shall be entitled to receive payments for non-disputed items.

15. **Notices.**

- a. All notices and demands by any Party to any other shall be given in writing and sent by a courier or by United States certified mail, postage prepaid, return receipt requested, and addressed as follows:

To the County: Douglas P. Stanley  
County Administrator  
PO Box 382  
Farmville, VA 23901

With copies to: Office of the County Attorney  
Prince Edward County, Virginia  
PO Box 382  
Farmville, VA 23901

To Design-Builder John Thornton  
Project Manager  
Prince Edward County Infrastructure, LLC  
4016 Holland Boulevard  
Chesapeake, Virginia 23323

With copies to: David Ervin, Vice President  
MEB General Contractors, Inc.  
4016 Holland Boulevard  
Chesapeake, Virginia 23323

and

Ed Stelter, Vice President  
Faulconer Construction Company, Inc.  
2496 Old Ivy Road  
Charlottesville, VA 22903

- b. Any Party may, upon prior notice to the others, specify a different address for the giving of notice. Notices shall be effective one (1) day after sending if sent by overnight courier or three (3) days after sending if sent by certified mail, return receipt requested.
16. **Successors and Assigns.** Except as expressly otherwise provided, all of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns. This Interim Agreement may not be assigned by Design-Builder without the prior written consent of the County, exercised in the sole discretion of the Board of Supervisors.
17. **Independent Contractor.** It is expressly understood and agreed by the Parties hereto that Design-Builder, in performing its obligations under this Interim Agreement, shall be deemed an independent contractor and not an agent, employee or partner of the County.
18. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but both of such counterparts together shall be deemed to be one and the same instrument. It shall not be necessary in making proof of this Agreement or any counterpart hereof to produce or account for the other counterpart.
19. **Governing Law.** The Interim Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth of Virginia.
20. **Annual Appropriation: Filing With Auditor of Public Accounts.** The financial obligations of the County contained in this Agreement are subject to annual appropriation. Within thirty (30) days after the date of this Agreement, the County shall submit a copy of this Agreement to the Auditor of Public Accounts, to the extent required by Va. Code § 56-575.9(F).
21. **Exhibits:** The following Exhibits are attached and made part of the contract:
- A Design-Builder's Services, Schedule
  - B Insurance



**IN WITNESS WHEREOF**, the Parties have executed this Interim Agreement as of the day and year first above written.

**COUNTY OF PRINCE EDWARD, VIRGINIA**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
County Clerk

Approved as to form:

\_\_\_\_\_  
\_\_\_\_\_, County Attorney

**PRINCE EDWARD COUNTY  
INFRASTRUCTURE, LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

This is EXHIBIT A, referred to in and part of the Interim Agreement for Design and Construction of Sandy River Reservoir Water Treatment and Distribution Project between Prince Edward County, Virginia and Prince Edward County Infrastructure, LLC.

## ARTICLE A.1 – SCOPE OF SERVICES TO BE PROVIDED BY DESIGN-BUILDER

### 1. Interim Agreement Design and Engineering Services to be performed by Designer for Design-Builder.

#### a. Study and Report Phase.

- i. Attend and participate in meetings as requested by Design-Builder and Owner as necessary to facilitate the efficient and timely delivery of the Project.
- ii. Review previously prepared reports and designs by other consultants to confirm Project scope and identify potential conflicts and opportunities to better define and value engineer the Project.
- iii. Consult with the Design-Build team, Owner and Owner's Consultants to confirm design parameters of proposed infrastructure.
- iv. Coordinate and hold meetings with regulatory agencies that will be required to issue permits prior to the Construction Phase. They include, but are not limited to, the following:
  - (1) Virginia Department of Health Office of Drinking Water (re: Waterworks permitting)
  - (2) Virginia Department of Environmental Quality (re: general discharge permit at water treatment plant, and land disturbance permits)
  - (3) Virginia Department of Transportation (re: land use permit)
  - (4) US Army Corps of Engineers (re: environmental permitting)
  - (5) Prince Edward County (re: site plan requirements and permitting; building permits)
- v. Pipelines:
  - (1) Prepare preliminary alignment exhibits to identify potential construction, easement acquisition and permitting challenges.
  - (2) Prepare quantity take-off for Design-Builder's use in preparation of Project Cost Estimate and Recommended Project Budget.
  - (3) Identify environmental resources that could impact Project permitting, cost and schedule.
- vi. Water Intake and Pump Station, and Water Treatment Plant:
  - (1) Prepare preliminary exhibits (plan and section) indicating general equipment configuration to include:
    - (a) Raw Water Intake
    - (b) Raw Water Pump Station Wetwell
    - (c) Raw Water Pump Piping and Valve Equipment
    - (d) Raw Water Pump Building and Generator Enclosure
    - (e) Raw Water Pipeline
    - (f) Chemical Addition (Pre-Clarification & Pre-Filtration) & Rapid Mixing
    - (g) Flocculation & Sedimentation Basin(s)

- (h) Filtration Equipment
- (i) Chemical Addition (Post-Clarification & Post-Filtration)
- (j) Disinfection
- (k) Clearwell On-Site Storage
- (l) Finished Water Pump Station
- (m) All Buildings
- (n) Site Improvements
- (o) Process Waste Disposal
- (p) Sanitary Waste Disposal

- (2) Prepare preliminary calculations for equipment and piping to confirm proof of concept.
- (3) Consult with vendors to make preliminary equipment selections.
- (4) Assist Design-Builder in preparation of Project Cost Estimate and Recommended Project Budget.

vii. Topographic Survey.

- (1) The Designer will provide a topographical survey for the Site utilizing aerial Light Detection and Ranging (LiDAR) and traditional photogrammetric methods. The survey will include 1' contouring and planimetric data. Site Datum will be based on NAD 83 (horizontal) and NAVD 88 (vertical) established using GPS methods. The final survey will be provided in a Civil 3D AutoCAD format.
- (2) The Designer will provide "supplemental" field run topographical survey for the Project to include location of visible improvements, storm and sanitary sewer alignments with invert data and surface indications of subsurface utilities. Contouring to be plotted at a 1' interval. Wetland flags will be field-located.
- (3) Services include research, fieldwork, and office calculations necessary to accurately locate property boundaries.
- (4) A Miss Utility ticket will be initiated for the Site and utilities located as marked. Any underground utilities deemed private or not marked cannot be field located.

viii. Geotechnical.

- (1) Geotechnical field exploration and laboratory testing will be provided for critical areas of construction and as determined by the Design-Builder.
- (2) A geotechnical engineering report will be provided for the Raw Water Intake, Raw Water Pump Station, Water Treatment Plant, and HDD crossing locations. The report will include the following:
  - (a) Site plan showing borings' locations of the exploration.
  - (b) Description of the exploration sampling methods as well as soil test boring logs.
  - (c) Cross-section figure of borings.
  - (d) Water levels encountered in the borings.
  - (e) Laboratory test results.
  - (f) Recommended foundation type for structures including allowable foundation capacity, embedment, and estimated settlement.

- (g) General information regarding site preparation including re-use of on-site soils as fill, identification of deleterious soils encountered in the borings, impact of weather and construction equipment on grading, fill compaction recommendations, and preparation of soil subgrades Seismic site classification recommendation in general accordance with the current Virginia Building Code.
- (h) Borings at both ends of the Horizontal Drill Location.
- (i) Boring at the Proposed Booster Pump Station.

ix. Environmental.

- (1) Conduct preliminary wetland surveys of anticipated alignment and construction sites to estimate impacts to wetlands, permit requirements and mitigation requirements.
- (2) Wetland Impact Permitting will be prepared during the 60% Design Phase of Work under the Comprehensive Agreement.
- (3) Provide a conceptual understanding of the impact of the Project on stormwater, and the types of BMPs necessary, especially for facilities with large and grade sensitive land requirements like detention ponds.
- (4) Items NOT included in this Scope of Services. The Designer will not perform the following services under this Agreement. At the request of the Owner, these services can be added for an additional fee, but are not included in this Scope.
  - (a) Protected Species Surveys
  - (b) Historical Resource Surveys
  - (c) Permitting Fees (application fees, cost of public notices, mitigation costs, etc.)
  - (d) Wetland Permit Compliance
  - (e) Virginia Stormwater Management Compliance

x. Subsurface Utility Engineering (SUE) & Utility Coordination.

- (1) Underground utility survey will be performed to designate and map underground facilities within the Project's topographic survey limits described above. This utility survey will include horizontal designation through geophysical methods and is defined as Quality Level "B" by the American Society of Civil Engineers (ASCE). The accuracies of the markings are subject to the depth and electrical conductivity of the utility as well as site conditions and manhole access. Plastic and fiber optics lines without tracer wires may be unlocatable. This service does not include the use of ground penetrating radar. Exclusions: laterals and roof drains; irrigation systems; and abandoned lines.
- (2) Coordinate with necessary utilities to design and provide required services for new facilities.

xi. Administrative.

- (1) Design-Builder shall provide the County with an outline for design discussion for each unit process in the Study and Report Phase as a basis for discussion by the Parties of options, advantages and disadvantages, financial constraints for Design-Builder to develop detailed standards.

b. Preliminary Design Phase (15% Design Level).

Upon confirmation of the Project design parameters identified in the Study and Report Phase, and after receipt of County direction to proceed, Designer will perform the Preliminary Design Phase services to include the following:

i. Pipelines:

- (1) Prepare base construction drawings for use in design to include the following:
  - (a) Topographic survey; planimetric features and contours
  - (b) Property lines
  - (c) Property ownership
  - (d) Underground utilities
  - (e) Environmental resources
  - (f) Existing surface profiles
- (2) Prepare Preliminary Design drawings to include the following:
  - (a) Cover sheet
  - (b) Schedule of drawings (including those anticipated in Final Design)
  - (c) Preliminary Construction details
  - (d) Preliminary Plan and Profile views of new pipelines
- (3) Prepare quantity take-off for Design-Builder's use in preparation of Project Cost Estimates and Recommended Project Budget.
- (4) Further identify and confirm environmental resources that could impact Project permitting, cost and schedule.
- (5) Where applicable, prepare detailed calculations of material selection for installation of pipe by Horizontal Direction Drill (HDD) method.
- (6) Where applicable, prepare detailed calculations for material selection for installation of pipe by Dry Jack and Bore method.

ii. Water Intake and Pump Station, and Water Treatment Plant:

- (1) Prepare base construction drawings for use in design to include the following:
  - (a) Topographic survey; planimetric features and contours
  - (b) Property lines
  - (c) Property ownership
  - (d) Underground utilities
  - (e) Environmental resources
  - (f) Existing surface profiles
- (2) Prepare Preliminary Design drawings for Project components outlined in the Study and Report Phase to include the following:
  - (a) Cover sheet
  - (b) Schedule of drawings (including those anticipated in Final Design)
  - (c) Preliminary Construction details
  - (d) Preliminary Site Layout Plan
  - (e) Preliminary Site Grading Plan
  - (f) Preliminary Stormwater Management Plan
  - (g) Preliminary Mechanical Plan and Sections; prepared in BIM

- (h) Preliminary Electrical Plan to include a preliminary Electrical Riser Diagram of main equipment components.
    - (3) Prepare detailed design calculations for all treatment process pipes, pumps and equipment.
  - iii. Attend and participate in meetings as requested by Design-Builder and Owner as necessary to facilitate the efficient and timely delivery of the Project.
- c. Proposal Development and Comprehensive Agreement Negotiation Phase.
  - i. At the conclusion of the Study/Report Phase of Work, as described above, and after receipt of County direction to proceed, the Design-Builder shall provide a proposed Comprehensive Agreement, Design & Construction Schedule, and Lump Sum price to the Owner for the design and construction of the Project.
  - ii. Under the Comprehensive Agreement, the Design-Builder shall provide all design services, and all labor, materials, equipment, subcontracted services, or other requirements outside of the Owner’s responsibility for the design and construction of the Project (“the Work”). The Design-Builder shall propose a Lump Sum which shall include the design fee, the cost of the Design Professional 's services during Construction, the cost of quality control testing services that fall outside the Owner's responsibility, Construction Project management, the cost of the Work (to include General Conditions and General Requirements), contingency, and the Design-Builder's fee including overhead and profit.
    - (1) Within the Lump Sum proposal, allowances shall be established for certain portions or items of the Work, which by their nature are difficult to accurately estimate at the time of execution of the Comprehensive Agreement. If the costs associated with the Work for which an allowance has been established exceed the allowance agreed within the Lump Sum Price, upon agreement of the Parties, the Design-Builder shall be entitled to an equitable adjustment for the excess costs. If the costs are less than the allowance agreed upon, the Owner shall be entitled to a credit.
    - (2) Additionally, the Lump Sum Proposal may identify Alternate Designs for the Owner’s consideration and identify an agreed-to additive price for each Alternate if elected by the Owner.
  - iii. The Design-Builder shall include with the Lump Sum Proposal a written statement of the basis, which shall include:
    - (1) A list of Drawings and Specifications and the conditions of the Contract Documents, which were used in preparation of the Lump Sum Proposal.
    - (2) A list of the clarifications and assumptions made by the Design-Builder in the preparation of the Lump Sum proposal to supplement the information contained in the Drawings and Specifications.
    - (3) The proposed Lump Sum as described in this Section 2.a.

- (4) A detailed schedule for the Comprehensive Agreement Phase of the Project outlining the remaining Design Professional's tasks, permitting allowances, construction activities, start-up and testing, training of the Owner's operational staff, and Project facilities' acceptance and commissioning. The schedule shall identify the Notice to Proceed date upon which the Lump Sum Proposal was based.
  - (5) Pricing used in its calculation of the Lump Sum for designated items of materials or equipment to be subject to an Economic Price Adjustment provision in the Comprehensive Agreement.
- iv. The Design-Builder shall meet with the Owner to review the Lump Sum Proposal and the written statement of its basis. In the event that the Owner discovers any inconsistencies or inaccuracies in the information presented, the Owner shall promptly notify the Design-Builder, who shall make appropriate adjustments to the Lump Sum Proposal, its basis, or both.
- d. Scheduling.
- i. Design Schedule. The Design-Builder shall produce, monitor, and update a design stage schedule in Primavera (P6).
  - ii. Preliminary Construction Schedule. The Design-Builder shall produce a preliminary Construction schedule as part of the Lump Sum Proposal as outlined above.
- e. Construction Planning.
- i. Design-Builder shall provide planning and coordination for subsequent Construction activities as they relate to the preliminary design packages, including potential subcontractor prequalification, vendor/supplier source listings, etc.
- f. Perform constructability reviews and rock investigations to reduce risk and assist in the development of the Lump Sum Price.

**2. Services Not Included in Interim Agreement.**

- a. The following activities are currently not included in the Interim Agreement and are proposed to be addressed in the Comprehensive Agreement:
  - i. Construction Management
  - ii. Preliminary or Final Design (except for that specifically included in this Scope of Services)
  - iii. Design revisions, financial model modifications and participation in meetings and/or negotiations to accommodate changes to serve or not serve potential wholesale partners to be coordinated by the Owner.
  - iv. Submittal of designs to review agencies.

- v. Purchase of materials.
- vi. Construction of the Project or portions thereof.
- vii. Basic Engineering Services during construction
- viii. Quality Control Testing and Inspections
- ix. Record Drawings
- x. Operations & Maintenance Manuals or Training



This is EXHIBIT B, referred to in and part of the Interim Agreement for Design and Construction of Sandy River Reservoir Water Treatment and Distribution Project between Prince Edward County, Virginia and Prince Edward County Infrastructure, LLC.

**ARTICLE B.1 – INSURANCE COVERAGES REQUIRED**

1. The limits of liability for the insurance required by the Agreement are as follows:

a. By Design-Builder and Designer:

1.	Workers Compensation	Statutory
2.	Employer’s Liability - Each Accident - Disease, Policy Limit - Disease, Each Employee	\$500,000 \$500,000 \$100,000
3.	General Liability - General Aggregate - Each Occurrence (Bodily Injury & Property Damage)	\$2,000,000 \$1,000,000
4.	Excess Umbrella Liability - Each Occurrence - General Aggregate	\$5,000,000 \$5,000,000
5.	Automobile Liability - Combined Single Limit (Bodily Injury & Property Damage): Each Accident	\$1,000,000
6.	Professional Liability - Per Claim - Aggregate	\$2,000,000 \$3,000,000

b. By Owner:

1.	General Liability - General Aggregate - Each Occurrence (Bodily Injury & Property Damage)	\$2,000,000 \$1,000,000
2.	Property Insurance - Each Occurrence	\$1,000,000

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- c. Additional Insureds. The following individuals or entities are to be listed on Owner's policies of insurance as "additional insureds" as provided in the Interim Agreement:
- i. MEB General Contractors, Inc.
  - ii. Faulconer Construction Company, Inc.

4891-0640-4121, v. 2

December 9, 2021

At the special meeting of the Board of Supervisors of Prince Edward County, held at the Court House, thereof, on Tuesday, the 9<sup>th</sup> day of December, 2021; at 5:00 p.m., there were present:

Beverly M. Booth

J. David Emert

Llew W. Gilliam, Jr.

Robert M. Jones

Odessa H. Pride

Jerry R. Townsend

James R. Wilck

Absent: Pattie Cooper-Jones

Also present: Douglas P. Stanley, County Administrator; Sarah E. Puckett, Assistant County Administrator; and Terri Atkins Wilson, County Attorney.

Chairman Emert called the special meeting to order.

Chairman Emert stated:

*Due to the COVID-19 Emergency, the Prince Edward County Board of Supervisors is operating pursuant to and in compliance with its "EMERGENCY CONTINUITY OF OPERATIONS ORDINANCE." Effective August 1, 2021, the Board has re-opened meetings to in-person participation by the public; however, there could still be limited available seating. Citizens are strongly encouraged to participate in meetings through in-person participation, written comments, and/or remote participation by calling: 1-844-890-7777, Access Code: 390313 (If busy, please call again.) Additionally, citizens may view the Board meeting live in its entirety at the County's YouTube Channel, the link to which is provided on the County's website.*

The Prince Edward County Board of Supervisors strongly encourages citizen input and engagement in our County government. Due to COVID-19, the Board of Supervisors, Planning Commission, and other County committees, boards, etc. are operating pursuant to the following protocols for public input and public participation.

Public Participation and Public Hearing comments and information regarding the limited number of seats for in-person participation at County meetings are coordinated through Karin Everhart, Deputy Clerk to the Board of Supervisors, as follows:

1. **In-Person Participation:** While county meetings have re-opened to the public, there could still be limited seating, if social distancing is needed. To enter the Prince Edward County Courthouse, unvaccinated and vaccinated individuals are required to wear a mask at all times and socially distance. Based on the uncertainty of social distancing requirements, the exact number of seats available in the Board/Planning Commission meeting room is uncertain. The County appreciates the public's patience as staff continues to adapt to the public safety recommendations and guidelines of the Virginia Department of Health and the CDC.

2. **Written Comments:** Please limit word count to no more than 500 words. Comments must be received by 2:00 p.m. the day of the meeting.
  - a. **Mailed:** Board of Supervisors (or Planning Commission)  
P.O. Box 382, Farmville, VA 23901.
  - b. **E-Mailed:** Board of Supervisors: [board@co.prince-edward.va.us](mailto:board@co.prince-edward.va.us)  
Planning Commission: [info@co.prince-edward.va.us](mailto:info@co.prince-edward.va.us)
3. **Remote Participation:** Citizens may participate remotely during the meeting. To call in to the meeting, please dial: 1-844-890-7777. When prompted for an Access Number: 390313. Citizens may provide comments during Public Participation and/or for a specific Public Hearing on the agenda. Citizens are encouraged to pre-register with the County Administrator's Office at 434-392-8837 by 2:00 p.m. the day of the meeting. Callers must be on the line and ready to speak when called upon by the Chair. Please state your name and district of residence. Based upon the # of speakers, the Chair will determine the time allotted to each speaker.
4. **County YouTube Channel:** Citizen may also view the monthly Board of Supervisors meeting live at the County's YouTube Channel: (link is also on County website under Meetings & Public Notices.) <https://www.youtube.com/channel/UCvfpsa5HEjIWEjBSc5XwplA/featured> .

Supervisor Townsend offered the invocation and led the Pledge of Allegiance.

In Re: Unsolicited Proposal Submitted Under PPEA

Mr. Stanley stated the County has received an Unsolicited Proposal under the Public-Private Education Facilities Infrastructure Act (PPEA) for a provision of constructing a water treatment plant and associated facilities at Sandy River Reservoir. He said the process is detailed; there are County policies and guidelines that dictate the process to adhere to the State Code, which has been amended by the General Assembly but nothing impacts what the County received for the requirements for receiving and accepting proposals.

The team of MEB, Timmons Group and Faulconer Construction Company Design-Build Team, DBA Prince Edward County Infrastructure, LLC (PECI Team) have submitted an Unsolicited Proposal to Prince Edward County pursuant to the Public Private Education Facilities and Infrastructure Act of 2002 (PPEA), and the guidelines adopted by the County on July 8, 2008. The team has deposited with the County \$50,000 to defray the cost of reviewing and implementing the proposal.

Per our adopted guidelines:

1. The Board of Supervisors must decide to either accept or reject the proposal for publication and conceptual stage consideration.
2. If the Board decides to accept the unsolicited proposal, the County must advertise for competing bids for not less than 45 days.

3. If additional bids are submitted, the County Administrator makes a recommendation to the Board to either: (1) Reject all proposals; (2) Proceed to a detailed stage review of either (a) the original proposal, (b) a competing proposal, (c) multiple proposals, or (d) request amendments to any proposal.
4. The Board shall approve the course of action to be implemented by the County.

Costs associated with the review of the proposal would be paid from the \$50,000 fee paid by the proposing team. Once all bids have been received and reviewed the Board will ultimately decide whether to proceed with an interim or comprehensive agreement or reject all bids. The decision to accept and advertise does not bind the County to a contract. The decision to proceed will merely authorize the advertisement for competing bids and begin the review process of the unsolicited proposal.

Mr. Joseph Hines, Timmons Group, presented information regarding the proposed PPEA project. He stated this project has been “50 years in the making” and presented information about the Prince Edward County Infrastructure, LLC (PECI) team.

Supervisor Cooper-Jones entered the meeting at this time.

Mr. Hines presented an Executive Summary, and explained the progressive design-build approach. He said this project is a regional water solution and an economic development driver as water and power are the main drivers [for economic development] currently. Mr. Hines reviewed the potential cost mitigation; he stated municipal [interest] rates are at an all-time low. He then stated the PECI team is proven to be effective.

Mr. David Ervin, MEB, said the design/build process accelerates the schedule as it takes less time than the design/bid/build process. He said this is the best process to deliver to the client. Mr. Ervin stated there is stimulus money available to leverage which would help the project move forward. He said this will be a state-of-the-art water treatment plant which may be upgraded and expanded in the future. He reviewed the design/build process and reviewed the qualifications of MEB, Faulconer Construction and Timmons Group.

Mr. Hines reviewed articles from previous projects the PECI team has worked on and presented possible anticipated headlines regarding the Prince Edward County water project.

Supervisor Jones stated that when the County entered into this project the first time, the Board was told that information gathered at that time would be useful in the future, and asked if that information could be used now. Mr. Hines said PECI recommends a different type of water plant now but some information may carry over.

Supervisor Wilck said that when a test release of one and a half million gallons of water occurred, he was surprised at the level of the absorption of the water into the river bed as opposed to just evaporation. Mr. Hines said

the Cobbs Creek project had similar results of mass-balance of the system, and that 20 miles upstream of the intake structure, they put the water into the river which provided the ability to take it out regardless of the evaporation that takes place between the release location and the intake structure. Some discussion followed.

In Re: Closed Session

Chairman Emert made a motion, seconded by Supervisor Townsend, that the Board convene in Closed Session for discussion and consideration of information subject to the exclusions of Subdivision 11 of Section 2.2-3705.6 of the *Code of Virginia* by Prince Edward County, a responsible public entity, as defined in Section 33.2-1800 of the *Code of Virginia*; and for discussion and consideration of the investment of public funds for water infrastructure where competition and bargaining is involved; and where, if made public initially, the financial interest of the County of Prince Edward would be adversely affected, pursuant to the exemption provided for in Section 2.2-3711(A)(6) of the *Code of Virginia*; and for consultation with legal counsel retained by the County regarding specific legal matters requiring the provision of legal advice by such counsel concerning the development of the Sandy River Water Project, pursuant to the exemption provided for in Section 2.2-3711(A)(7) of the *Code of Virginia*; the motion carried:

Aye:	Beverly M. Booth Pattie Cooper-Jones J. David Emert Llew W. Gilliam, Jr. Robert M. Jones Odessa H. Pride Jerry R. Townsend James R. Wilck	Nay:	None
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The Board returned to regular session by motion of Supervisor Cooper-Jones, seconded by Supervisor Jones and adopted as follows:

Aye:	Beverly M. Booth Pattie Cooper-Jones J. David Emert Llew W. Gilliam, Jr. Robert M. Jones Odessa H. Pride Jerry R. Townsend James R. Wilck	Nay:	None
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On motion of Chairman Emert and seconded by Supervisor Jones, and carried by the following roll call vote:

Aye:	Beverly M. Booth Pattie Cooper-Jones J. David Emert Llew W. Gilliam, Jr. Robert M. Jones	Nay:	None
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Odessa H. Pride  
Jerry R. Townsend  
James R. Wilck

the following Certification of Closed Meeting was adopted in accordance with the Virginia Freedom of Information Act:

WHEREAS, the Prince Edward County Board of Supervisors convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of The Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3712 of the *Code of Virginia* requires a certification by this Board of Supervisors that such closed meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, BE IT RESOLVED that the Prince Edward County Board of Supervisors hereby certifies that to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed, or considered by the Prince Edward County Board of Supervisors.

Supervisor Cooper-Jones made a motion, seconded by Supervisor Townsend, that pursuant to the Public-Private Educational Facilities and Infrastructure Act of 2002 (PPEA) and the County's PPEA Guidelines, the Board accept the unsolicited proposal of Prince Edward County Infrastructure, LLC for the design and construction of a water system serving the County; and further move the Board make a determination to use competitive negotiation in selecting a contractor; and to authorize the County Administrator to post the non-confidential portions of the proposal and advertise for the receipt of competing proposals for a period of not less than 45 days; the motion carried:

Aye:	Beverly M. Booth Pattie Cooper-Jones J. David Emert Llew W. Gilliam, Jr. Robert M. Jones Odessa H. Pride Jerry R. Townsend James R. Wilck	Nay:	None
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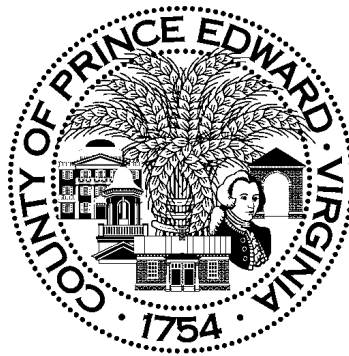
On motion of Supervisor Cooper-Jones, seconded by Supervisor Wilck, and adopted by the following vote:

Aye:	Beverly M. Booth Pattie Cooper-Jones J. David Emert Llew W. Gilliam, Jr. Robert M. Jones Odessa H. Pride Jerry R. Townsend James R. Wilck	Nay:	None
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the meeting was adjourned at 6:36 p.m.



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



## **County of Prince Edward, Virginia Guidelines and Procedures**

**Adopted: July 8, 2008**

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## I. INTRODUCTION

The Public-Private Education Facilities and Infrastructure Act of 2002, as amended, Va. *Code* §§56-575.1 through 56-575.17, (the *Act*, or PPEA) is the legislative framework enabling departments, agencies and institutions of the Commonwealth of Virginia, as well as local governments and certain other public bodies, to enter agreements authorizing private entities (sometimes referred to herein as “Private Partner” or “Contractor”) to develop and/or operate qualifying projects as defined in the Act. The guidelines and procedures presented in this document were developed pursuant to the requirements of Virginia Code § 56-575.3:1 and 56-575.16. These guidelines and procedures are to be followed by all departments, agencies and institutions of the County of Prince Edward (all sometimes referred to herein as “County”) in considering and developing projects under the Act. The guidelines and procedures will also guide private entities who wish to partner with the County in undertaking projects pursuant to the Act.

The Act grants responsible public entities the authority to create public-private partnerships for the development of a wide range of projects for public use if the public entities determine there is a need for such projects and that private involvement may provide the project in a more timely or cost-effective fashion, lead to productivity or efficiency improvements in the public entities’ processes or delivery of services, considering, among other things, the probable scope, complexity or priority of the project; risk sharing including guaranteed cost or completion guarantees; added value or debt or equity investments proposed by the private entity; or an increase in funding, dedicated revenue source or other economic benefit that would not otherwise be available.

Virginia *Code* §56-575.16.2, provides, in part: “When the responsible public entity determines to proceed according to the guidelines adopted by it pursuant to this subdivision, it shall state the reasons for its determination in writing.” In order for a project to come under the PPEA, it must meet the definition of a “qualifying project.” The PPEA contains a broad definition of “qualifying project” that includes public buildings and facilities of all types, and certain infrastructure and services such as:

- A. An education facility, including, but not limited to, a school building, any functionally-related and subordinate facility (a stadium, for example), land appurtenant to a school building, and any depreciable property provided for use in a school facility that is operated as part of the public school system or as an institution of higher education;
- B. A building or facility that meets a public purpose and is developed or operated by or for any public entity;
- C. Improvements, together with equipment, necessary to enhance public safety and security of buildings to be principally used by a public entity;
- D. Utility and telecommunications and other communications infrastructure;
- E. A recreational facility;
- F. Technology infrastructure, services and applications, including, but not limited to: telecommunications, automated data processing, word processing and management information systems, and related information, equipment, goods and services;
- G. Any services dedicated to increase productivity or efficiency through the director or indirect use of technology;
- H. Any technology, equipment, or infrastructure designed to deploy wireless broadband services to schools, businesses, or residential areas;
- I. Any improvements necessary or desirable to any unimproved locally or state-owned real estate.

Because the PPEA is intended to encourage innovative partnerships between responsible public entities and private entities, the County is encouraged to maintain an open dialogue with private entities to discuss the need for infrastructure improvements. Although guidance with regard to the application of the PPEA is provided in this document, it is incumbent upon all entities, both public and private, to comply with the provisions of the PPEA and other applicable laws. In the event that the PPEA is amended in a manner that either conflicts with these guidelines or concerns material matters not addressed by these guidelines, then these guidelines shall be interpreted in a manner to conform to the new law.

## II. GENERAL PROVISIONS

### A. Proposal Submission

Proposals may be invited through solicitation or they may be considered when delivered by a private entity on an unsolicited basis. In either case, proposers must follow a two-part submission process consisting of an initial Conceptual Stage (Part 1) and, after approval of the conceptual stage, a Detailed Stage (Part 2). The initial stage of the proposal should provide specified information on proposer qualifications and experience, project characteristics, project financing, anticipated public support or opposition, or both, and project benefit and compatibility. The Part 2 detailed proposal must provide detailed scope and budget estimates and identify deliverables.

Proposals should be prepared simply and economically, providing a concise description of the proposer's capabilities to complete the proposed qualifying project and the benefits to be derived from the 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 should include a comprehensive scope of work and a financial plan for the project that contains enough detail to allow analysis of the proposed project's financial feasibility. The PPEA is a flexible development tool that allows use of innovative financing techniques. Depending on the circumstances of each transaction, financing options might include the use of special purpose entities, sale and lease-back transactions, enhanced use leasing, property exchanges, development agreements, conduit financing and other methods allowed by law. However, 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.

The PPEA is intended to encourage proposals from the private sector that offer the assumption of commensurate risk by the private partner through innovative approaches to project financing, development and/or use. However, while substantial private sector involvement is encouraged, qualifying facilities must be devoted primarily to *public* use. Accordingly, the County shall continue to exercise full and proper due diligence in the evaluation and selection of private entities to carry-out the proposals. In this regard, the qualifications, capabilities, resources and other attributes of a prospective private partner and its entire team must be carefully examined for every project. Private entities proposing projects shall be held strictly accountable for representations regarding their qualifications, experience and any other content of their proposals, including all aspects of work to be performed.

### B. Affected Jurisdictions

Any private entity requesting approval from or submitting a conceptual or detailed proposal to the County must provide any other affected jurisdiction with a copy of the private entity's request or proposal by certified mail, express delivery, or hand delivery within five business days of submission to the County.

Affected jurisdictions shall have 60 days from the receipt of the request or proposal to submit written comments to the County and to indicate whether the proposed qualifying project is compatible with the (i) local comprehensive plan, (ii) local infrastructure development plans, or (iii) capital improvements budget or other government spending plan. Comments received within the 60-day period shall be given consideration by the County, and no negative inference shall be drawn from the absence of comment by an affected jurisdiction.

**C. Proposal Review Fee**

The County shall receive an analysis of the proposal from appropriate internal staff or outside advisors or consultants with relevant experience in determining whether to enter into an agreement with the private entity. The County may charge a fee to the private entity to cover the costs of processing, reviewing, and evaluating any unsolicited proposal or competing unsolicited proposal submitted under the PPEA, including a fee to cover the costs of outside attorneys, consultants, and financial advisors. Any fee charged for such review of a proposal should be reasonable in comparison to the level of expertise required to review the proposal and should not be greater than the direct costs associated with evaluating the proposed qualifying project. "Direct costs" may include (i) the cost of staff time required to process, evaluate, review and respond to the proposal and (ii) the out-of-pocket costs of attorneys, consultants, and financial advisors.

No proposal fee will be charged by the County to process, review or evaluate any solicited proposal submitted under the PPEA.

For unsolicited proposals and competing proposals, the County shall charge a fee of one-half of one percent (0.5%) of the estimated cost of implementing the proposal. The minimum fee shall be \$5,000 and the maximum fee shall be \$50,000. 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. Such sums shall be paid with certified funds and shall be deposited with the County Treasurer on the books of the County in an account known as the PPEA Fees.

- If the cost of reviewing the proposal is less than the established proposal fee, the County may refund the excess to the proposer.
- If during the initial review the County decides not to proceed to conceptual-stage review of an unsolicited proposal, the proposal fee, less any direct costs of the initial review, shall be refunded to the private entity.
- If the County chooses to proceed with evaluation of proposal(s) under the PPEA, it shall not do so until the entire, non-refundable proposal fee has been paid to the County Treasurer, in full.

**D. Freedom of Information Act**

**1. General applicability of disclosure provisions.**

Proposal documents submitted by private entities are generally subject to the Virginia Freedom of Information Act ("FOIA") except that § 2.2-3705.6 (11) exempts certain documents from public disclosure. FOIA exemptions, however, are discretionary, and a responsible public body may elect to release some or all of documents except to the extent the documents are:

- a. Trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.);
- b. Financial records of the private entity that are not generally available to the public through regulatory disclosure or otherwise, including but not limited to, balance sheets and financial statements; or
- c. Other information submitted by a private entity, where if the record or document were made public prior to the execution of an interim or comprehensive agreement the financial interest or bargaining position of the public or private entity would be adversely affected.

Additionally, to the extent access to proposal documents submitted by private entities are compelled or protected from disclosure by a court order, the County must comply with the provisions of such order.

**2. Protection from mandatory disclosure for certain documents of a private entity.**

Before a document of a private entity may be withheld from disclosure, the private entity must make a written request to the County at the time the documents are submitted designating with specificity the documents for which the protection is being sought and a clear statement of the reasons for invoking the protection with reference to one or more of three classes of records listed in Section D.1.

Upon the receipt of a written request for protection of documents, the County shall determine whether the documents contain (i) trade secrets, (ii) financial records, or (iii) other information that would adversely affect the financial interest or bargaining position of the County or private entity in accordance with Section D.1. The County shall make a written determination of the nature and scope of the protection to be afforded by the responsible public entity under this subdivision. If the written determination provides less protection than requested by the private entity, the private entity should be accorded an opportunity to withdraw its proposal. Nothing shall prohibit further negotiations of the documents to be accorded protection from release although what may be protected must be limited to the categories of records identified in Section D.1.

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

Cost estimates relating to a proposed procurement transaction prepared by or for the County shall not be open to public inspection.

**3. Protection from mandatory disclosure for certain County documents.**

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

Cost estimates relating to a proposed procurement transaction prepared by or for the County shall not be open to public inspection.

**4. If a private entity fails to designate confidential or proprietary information, records or documents for protection from disclosure, such information, records or documents shall be subject to disclosure under FOIA.**

**5. The County may not withhold from public access:**

- a.** Procurement records other than those subject to the written determination of the County;

- b. Information concerning the terms and conditions of any interim or comprehensive agreement, service contract, lease, partnership, or any agreement of any kind executed by the County and the private entity;
- c. Information concerning the terms and conditions of any financing arrangement that involves the use of any public funds; or
- d. Information concerning the performance of any private entity developing or operating a qualifying project.

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.

**E. 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 PPEA. Accordingly, the processes and procedural requirements associated with the expenditure or obligation of public funds shall be incorporated into planning for any PPEA project or projects.

**F. Applicability of Other Laws**

Nothing in the PPEA shall affect the duty of the County to comply with all other applicable law not in conflict with the PPEA. The applicability of the Virginia Public Procurement Act is as set forth in the PPEA.

**G. Individual Responsible to Receive Proposals and Respond to Inquiries**

The County representative assigned the responsibility of receiving proposals under the PPEA and also to respond to inquiries as well as hold informational meetings and to insure fair treatment of all who submit a proposal is: W.W. Bartlett, County Administrator, County of Prince Edward, 111 South Street, 3rd Floor, P.O. Box 382, Farmville, VA 23901. TEL: 434-392-8837. FAX: 434-392-6683.

**III. SOLICITED PROPOSALS**

The County may issue Requests for Proposals (RFPs) or Invitations for Bids (IFBs), inviting proposals from private entities to develop or operate qualifying projects. The County may not issue a RFP until it has adopted guidelines to govern the PPEA documentation, review, and selection process. The County may use a two-part proposal process consisting of an initial conceptual phase and a detailed phase. An RFP may invite proposers to submit proposals on individual projects identified by the County. In such a case the County should set forth in the RFP the format and supporting information that is required to be submitted, consistent with the provisions of the PPEA. The County may establish suggested timelines for selecting proposals for the review and selection of solicited proposals.

The RFP should specify, but not necessarily be limited to, information and documents that must accompany each proposal and the factors that will be used in evaluating the submitted proposals. The RFP should be posted in such public areas as are normally used for posting of the County's notices, including the County's website. Notices should also be published in a newspaper or other publications of general circulation and advertised in Virginia Business Opportunities and posted on the Commonwealth's electronic procurement site. The RFP should also contain or incorporate by reference other applicable terms and conditions, including any unique capabilities or qualifications that will be required of the private entities submitting proposals. Pre-proposal conferences may be held as deemed appropriate by the County.

#### IV. UNSOLICITED PROPOSALS

The PPEA permits the County to consider unsolicited proposals received from private entities for development and/or operation of qualifying projects.

The County may publicize their needs and encourage interested parties to submit unsolicited proposals subject to the terms and conditions of the PPEA. When such proposals are received without issuance of an RFP, the proposal shall be treated as an unsolicited proposal under the Act. Unsolicited proposals should be submitted to the County Administrator, and the delivery should be confirmed for the submitter by written receipt.

##### 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 of any unsolicited proposal, or group of proposals, and payment of the required fee by the proposer or proposers, the County should determine whether to accept the unsolicited proposal for publication and conceptual stage consideration. If the County determines not to accept the proposal, it shall return the proposal, together with all fees and accompanying documentation, to the proposer.
3.
  - a. If the County chooses to accept an unsolicited proposal for publication and conceptual-phase consideration, it shall post a notice in a public area regularly used by the County for posting of public notices for a period of not less than 45 days. The County shall also publish the same notice for a period of not less than 45 days in one or more newspapers or periodicals of general circulation in the jurisdiction to notify any parties that may be interested in submitting competing unsolicited proposals. In addition, the notice should be advertised in Virginia Business Opportunities and on the Commonwealth's electronic procurement website. The notice shall state that the County (i) has received an unsolicited proposal under the PPEA, (ii) intends to evaluate the proposal, (iii) may negotiate an interim or comprehensive agreement with the proposer based on the proposal, and (iv) will receive for simultaneous consideration any competing proposals that comply with the procedures adopted by the County and the PPEA.
  - b. The notice also shall summarize the proposed qualifying project or projects, and identify their proposed locations. To ensure that sufficient information is available upon which to base the development of a serious competing proposal, representatives of the County familiar with the unsolicited proposal and the guidelines established by the County shall be made available to respond to inquiries and meet with private entities that are considering the submission of a competing proposal. The County shall conduct an analysis of the information pertaining to the proposal included in the notice to ensure that such information sufficiently encourages competing proposals. Further, the County shall establish criteria, including key decision points and approvals to ensure proper consideration of the extent of competition from available private entities prior to selection.
  - c. Prior to posting of the notices provided for in this subsection, the County shall receive from the initial proposer(s) the balance due, if any, of the required project proposal review fee.



**B. Posting Requirements**

1. Conceptual proposals, whether solicited or unsolicited, shall be posted by the County within 10 working days after acceptance of such proposals in the following manner:

Posting shall be on the County's website or by publication, in a newspaper of general circulation in the area in which the contract is to be performed, of a summary of the proposals and the location where copies of the proposals are available for public inspection. Posting may also be on the Department of General Service's web-based electronic procurement program commonly known as "eVA," in the discretion of the County.

2. Nothing shall be construed to prohibit the posting of the conceptual proposals by additional means deemed appropriate by the County so as to provide maximum notice to the public of the opportunity to inspect the proposals.
3. 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 § 2.2-3705.6** shall not be required to be posted, except as otherwise agreed to by the County and the private entity. Any inspection of procurement transaction records shall be subject to reasonable restrictions to ensure the security and integrity of the records.

**C. Initial Review by the County at the Conceptual Stage (Part 1)**

After reviewing the original proposal and any competing proposals submitted during the notice period, the County Administrator will recommend to the Board of Supervisors:

1. Not to proceed further with any proposal,
2. To proceed to the detailed (Part 2) stage of review with the original proposal,
3. To proceed to the detailed (Part 2) stage with a competing proposal,
4. To proceed to the detailed (Part 2) stage with multiple proposals, or
5. To request modifications or amendments to any proposal.

The Board of Supervisors shall approve the course of action to be implemented by the County. In the event that more than one proposal will be considered in the detailed (Part 2) stage of review, the County shall determine whether the unsuccessful private entity, or entities, shall be reimbursed, in whole or in part, for costs incurred in the detailed stage of review. In such case, reasonable costs may be assessed to the successful proposer as part of any ensuing interim or comprehensive agreement.

Discussions between the County and a private entity about the need for infrastructure improvements shall not inhibit the County's ability to employ other procurement procedures to meet such needs. The County retains the right to reject any proposal at any time, without penalty, prior to the execution of an interim or comprehensive agreement.

**V. REVIEW OF SOLICITED AND UNSOLICITED PROPOSALS**

- A. Only proposals complying with the requirements of the PPEA that contain sufficient information for a meaningful evaluation and that are provided in an appropriate format will be considered by the County for further review at the conceptual stage. Formatting suggestions for proposals at the conceptual stage are found at Section VI A.

- B.** The County will determine at the initial review stage whether it will proceed using:
- 1.** Standard procurement procedures consistent with the Virginia Public Procurement Act; or
  - 2.** Guidelines developed by the County that are consistent with procurement of other than professional services through "competitive negotiation" as the term is defined in Virginia Code § 2.2-4301 (competitive negotiation). The County may proceed using such procedures only if it makes a written determination that doing so is likely to be advantageous to the Commonwealth and the public based upon either (i) the probable scope, complexity or priority of need, or (ii) the risk sharing, including guaranteed cost or completion guarantees, added value or debt or equity investments proposed by the private entity, or (iii) increase in funding, dedicated revenue or other economic benefit from the project would otherwise not be available.

## **VI. PROPOSAL PREPARATION AND SUBMISSION**

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

Proposals at the conceptual stage must contain information in the following areas: (i) qualifications and experience, (ii) project characteristics, (iii) project financing, (iv) anticipated public support or opposition, or both, (v) project benefit and compatibility and (vi) such additional information as may seem prudent which is not inconsistent with the requirements of the PPEA. Suggestions for presenting information to be included in proposals at the Conceptual Stage include:

- 1.** 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 (\$1 million or more) in the structure fits into the overall team. All members of the offeror's team, including major subcontractors known to the proposer must be identified at the time a proposal is submitted for the Conceptual Stage. Include the status of the Virginia license of each partner, proposer, contractor, and major subcontractor. 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 responsible Agency.
  - 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 or consortium of firms. Describe the past technical performance history on recent projects of comparable size and complexity, including disclosure of any legal claims, of the firm or consortium of firms. Include the identity of any firms that will provide design, construction and completion guarantees and warranties and a description of such guarantees and warranties.

- 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 3 years with contact information for such clients (names/addresses /telephone numbers). If a firm has worked on more than ten (10) projects during this period, it may limit its prior project list to ten (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 years in terms of cost, quality, schedule, safety and other matters relevant to the successful project development, operation, and completion.
- d. Provide the names, addresses, 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 or greater.
- f. Identify any persons known to the proposer who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to The Virginia State and Local Government Conflict of Interest Act, Chapter 31 (§ 2.2-3100 et seq.) 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. For each firm or major subcontractor that will perform construction and/or design activities, provide the following information:
  - (1) 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.
  - (2) A completed qualification statement on a form developed by the County that reviews all relevant information regarding technical qualifications and capabilities, firm resources and business integrity of the firm, 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 years any of the following conduct:
    - (A) bankruptcy filings
    - (B) liquidated damages
    - (C) fines, assessments or penalties
    - (D) judgments or awards 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) safety past performance data, including fatality incidents, “Experience Modification Rating,” “Total Recordable Injury Rate” and “Total Lost Workday Incidence Rate”
- (J) violations of any federal, state or local criminal or civil law
- (K) criminal indictments or investigations
- (L) legal claims filed by or against the firm

- i. Worker Safety Programs: Describe worker safety training programs, job-site safety programs, accident prevention programs, written safety and health plans, including incident investigation and reporting procedures.
- j. Virginia Code 22.1-296.1C provides: “Prior to awarding a contract for the provision of services that require the contractor or his employees to have direct contact with students, the school board shall require the contractor and, when relevant, any employee who will have direct contact with students, to provide certification that (i) he has not been convicted of a felony or any offense involving the sexual molestation or physical or sexual abuse or rape of a child; and (ii) whether he has been convicted of a crime of moral turpitude.” Identify the proposed plan for complying with the intent of Va. Code §22.1-296.1C (whether or not the statute applies to the client Agency) if the contractor or its employees or subcontractors, will have direct contact with students.

**2. Project Characteristics**

- a. Provide a description of the project, including the conceptual design. Describe the proposed project in sufficient detail so that type and intent of the project, the location, and the communities that may be affected are clearly identified.
- b. Identify and fully describe any work to be performed by the County or any other private or public entity.
- c. 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.
- d. 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.
- e. Identify the projected positive social, economic and environmental impacts of the project.
- f. Identify the proposed schedule for the work on the project, including the estimated time for completion.
- g. Identify contingency plans for addressing public needs in the event that all or some of the project is not completed according to projected schedule.
- h. Propose allocation of risk and liability for work completed beyond the agreement's completion date, and assurances for timely completion of the project.

- i. State assumptions related to ownership, legal liability, law enforcement and operation of the project and the existence of any restrictions on the County's use of the project.
  - j. Provide information relative to phased or partial openings of the proposed project prior to completion of the entire work.
  - k. List any other assumptions relied on for the project to be successful.
  - l. List any contingencies that must occur for the project to be successful.
3. 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 the proposed risk factors and methods for dealing with these factors.
  - e. Identify any local, state or federal resources that the proposer contemplates requesting for the project. Describe the total commitment, if any, expected from governmental sources and the timing of any anticipated commitment. Such disclosure should include any direct or indirect guarantees or pledges of the County's credit or revenue.
  - f. Identify the amounts and the terms and conditions for any revenue sources.
  - g. Identify any aspect of the project that could disqualify the project from obtaining tax-exempt financing.
4. Project Benefit and Compatibility
- a. Identify who will benefit from the project, how they will benefit, and how the project will benefit the overall community, region, or state.
  - b. Identify any anticipated public support or opposition, as well as any anticipated government support or opposition, for the project;
  - c. Explain the strategy and plan that will be carried out to involve and inform the general public, business community, other local

governments, and state governmental agencies in areas affected by the project;

- d. Describe the compatibility of the project with local, regional, and state economic development efforts.
- e. Describe the compatibility with the local comprehensive plan, local infrastructure development plans, and capital improvements budget or other local spending plan.
- f. Provide a statement setting forth participation efforts to be undertaken in connection with this project with regard to the following types of businesses: (i) minority-owned businesses; (ii) woman-owned businesses; and (iii) small businesses.

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

If the County decides to proceed to the detailed stage (Part 2) with one or more proposals, each selected private entity must provide the following information, where applicable, unless the County waives the requirement or requirements:

- 1. A topographical map (1:2,000 or other appropriate scale) depicting the location of the proposed project;
- 2. A conceptual site plan indicating proposed location and configuration of the project on the proposed site;
- 3. Conceptual (single line) plans and elevations depicting the general scope, appearance and configuration of the proposed project;
- 4. A detailed description of the proposed participation, use and financial involvement of the locality in the project. Include the proposed terms and conditions for the project if they differ from the standard state General Conditions;
- 5. A list of public utility facilities, if any, that will be crossed by the qualifying project and a statement of the plans of the proposer to accommodate such crossings;
- 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 proposer intends to request the public entity to condemn;
- 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 regarding user fees or rates and usage of the projects.
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 or indication of the steps required for acceptance into such plans.
12. Explanation of how the proposed project would impact local development plans of each affected local jurisdiction.
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 the executive management and the officers and directors of the firm or firms submitting the proposal. In addition, identification of any known conflicts of interest or other disabilities that may impact the County's consideration of the proposal, including the identification of any persons known to the proposer who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to The Virginia State and Local Government Conflict of Interest Act, Chapter 31 (§ 2.2-3100 et seq.) of Title 2.2.
15. Acknowledge conformance with Virginia Code Sections 2.2-4367 thru 2.2-4377 (the Ethics in Public Contracting Act);
16. Additional material and information as the County may request.

## **VII. PROPOSAL EVALUATION AND SELECTION CRITERIA**

In selecting proposals, all relevant information from both the Conceptual Stage and the Detailed Stage must be considered, along with the following:

### **A. Qualifications and Experience**

To determine whether the proposer possesses the requisite qualifications and experience, factors to consider in review of either phase should include:

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. Project staffing plans, the skill levels of the proposed workforce, apprenticeship and other training programs offered for the project, and the proposed safety plans for the project;
9. Financial condition; and
10. Project ownership.

**B. Project Characteristics**

Factors to consider in determining the project characteristics include:

1. Project definition;
2. Proposed project schedule;
3. Operation of the project;
4. Technology, technical feasibility;
5. Conformance with applicable laws, regulations, codes, guidelines and standards;
6. Environmental impacts;
7. Condemnation impacts;
8. State and local permits; and
9. Maintenance of the project.

**C. Project Financing**

Factors to be considered in determining whether the proposed project financing allows adequate access to the necessary capital to finance the project include:

1. Cost and cost benefit to the County;
2. Financing and the impact on the debt or debt burden of the County;
3. Financial plan, including overall feasibility and reliability of plan; operator's past performance with similar plans and similar projects; degree to which operator has conducted due diligence investigation and analysis of proposed financial plan and results of any such inquiries or studies.
4. Estimated cost; and
5. Life-cycle cost.
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, as applicable; and,



7. Such other items as the County deems appropriate.

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

**D. Public Benefit and Compatibility**

Factors to be considered in determining the proposed project's compatibility with the appropriate local or regional comprehensive or development plans include:

1. Community benefits, including the economic impact the project will have on the County and/or region in terms of amount of tax revenue to be generated, the number of temporary and full-time jobs created, and level of pay and fringe benefits of such jobs, the training opportunities for apprenticeships and other training programs generated by the project and the number and value of subcontracts generated for Virginia subcontractors.
2. Community support or opposition, or both;
3. Public involvement strategy;
4. Compatibility with existing and planned facilities; and
5. Compatibility with local, regional, and state economic development efforts.

**E. Other Factors**

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

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

## VIII. ADDITIONAL REVIEW PROCEDURES

### A. Public Private Partnership Oversight Advisory Committee

The County may establish criteria to trigger establishment of an advisory committee consisting of representatives of the Board of Supervisors, County staff and County Citizens to review the terms of the proposed interim or comprehensive agreement. The criteria should include, but not be limited to, the scope, total cost and duration of the proposed project, and whether the project involves or impacts multiple public entities. Timelines for the work of the committee should be developed and made available to proposers.

### B. Appropriating Body

If the responsible public entity for appropriating or authorizing funding to pay for a qualifying project is different from the responsible public entity reviewing or approving the project, then the responsible public entity reviewing or approving the project should establish a mechanism for that appropriating body to review any proposed interim or comprehensive agreement prior to execution. When a school board is the responsible public entity, review by the Board of Supervisor is required.

## IX. INTERIM AND COMPREHENSIVE AGREEMENTS

Prior to developing or operating the qualifying project, the selected private entity shall enter into a comprehensive agreement with the County. Prior to entering a comprehensive agreement, an interim agreement may be entered into that permits a private entity to perform compensable activities related to the project. The County may designate a working group to be responsible for negotiating any interim or comprehensive agreement. Any interim or comprehensive agreement shall define the rights and obligations of the County and the selected proposer with regard to the project.

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

The scope of an interim agreement may include but is not limited to:

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

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.

**B. Comprehensive Agreement Terms**

The scope of the comprehensive agreement shall include but not be limited to:

1. The delivery of maintenance, performance and payment bonds or letters of credit in connection with any acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the qualifying project;
2. The review of plans and specifications by the County, its agencies or instrumentalities;
3. The rights of the County to inspect the project to ensure compliance with the comprehensive agreement and any development plans and specifications;
4. The maintenance of a policy or policies of liability insurance or self-insurance reasonably sufficient to insure coverage of the project and the tort liability to the public and employees and to enable the continued operation of the qualifying project;
5. The monitoring of the practices of the operator by the County, its agencies or instrumentalities to ensure proper maintenance;
6. The terms under which the Contractor will reimburse the County for services provided;
7. The policy and procedures that will govern the rights and responsibilities of the County and the Contractor in the event that the comprehensive agreement is terminated or there is a material default by the Contractor including the conditions governing assumption of the duties and responsibilities of the Contractor by the County and the transfer or purchase of property or other interests of the Contractor by the County;
8. The terms under which the Contractor will file appropriate financial statements on a periodic basis;
9. The mechanism by which user fees, lease payments, or service payments, if any, may be established from time to time upon agreement of the parties. Any payments or fees shall be set at a level that is the same for persons using the facility under like conditions and that will not materially discourage use for the qualifying project;
  - a. A copy of any service contract shall be filed with the County.
  - b. A schedule of the current user fees or lease payments shall be made available by the Contractor to any member of the public upon request.
  - c. Classifications according to reasonable categories for assessment of user fees may be made.
10. The terms and conditions under which the County may be required to contribute financial resources, if any;
11. The terms and conditions under which existing site conditions will be addressed, including identification of the party responsible for conducting assessments and taking necessary remedial action;
12. The terms and conditions under which the County will be required to pay money to the private entity and the amount of any such payments for the project.

13. A periodic reporting procedure that incorporates a description of the impact of the project on the County;
14. Such other terms and conditions as the County may deem appropriate.

The comprehensive agreement may provide for the development or operation of phases or segments of a qualifying project.

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.

**C. Notice and Posting requirements**

1. In addition to the posting requirements of Section IV, 30 days prior to entering into an interim or comprehensive agreement, the County shall provide an opportunity for public comment on the proposals. Such public comment period shall include a public hearing held by the Board of Supervisors. After the end of the public comment period, no additional posting shall be required based on any public comment received.
2. Once the negotiation phase for the development of an interim or a comprehensive agreement is complete and a decision to award has been made by the County, the County shall post the proposed agreement in the following manner:
  - a. Posting shall be on the County's website or by publication, in a newspaper of general circulation in the area in which the contract work is to be performed, of a summary of the proposals and the location where copies of the proposals are available for public inspection. Posting may also be on the Department of General Service's web-based electronic procurement program commonly known as "eVA," in the discretion of the local RPE.
  - b. 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 § 2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the County and the private entity.
  - c. Any studies and analyses considered by the responsible public entity in its review of a proposal shall be disclosed to the Board of Supervisors at some point prior to the execution of an interim or comprehensive agreement.

3. Once an interim agreement or a comprehensive agreement has been executed, the County shall make procurement records available for public inspection, upon request.
  - 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 or private entity.
  - b. Such procurement records shall not include (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or (ii) financial records, including balance sheets or financial statements of the private entity that are not generally available to the public through regulatory disclosure or otherwise.

**D. Filing of PPEA Comprehensive Agreement with Auditor of Public Accounts**

In compliance with Va. Code Section 56-575.9F, the County, within thirty (30) days of entering into a comprehensive agreement pursuant to the PPEA, shall submit a copy of such agreement to the Auditor of Public Accounts.

**X. GOVERNING PROVISIONS**

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

**XI. TERMS AND DEFINITIONS**

**"Affected jurisdiction"** means any county, city, or town in which all or a portion of a qualifying project is located.

**"Appropriating body"** means the body responsible for appropriating or authorizing funding to pay for a qualifying project.

**"Comprehensive agreement"** means the comprehensive agreement between the private entity and the responsible public entity that is required prior to the development or operation of a qualifying project.

**"Conceptual stage"** means the initial phase of project evaluation when the public entity makes a determination whether the proposed project serves a public purpose, meets the criteria for a qualifying project, assesses the qualifications and experience of a private entity proposer, reviews the project for financial feasibility, and warrants further pursuit.

**"Cost-benefit analysis"** means an analysis that weighs expected costs against expected benefits in order to choose the best option. For example, a city manager may compare the costs and benefits of constructing a new office building to those of renovating and maintaining an existing structure in order to select the most financially advantageous option.

**"Detailed stage"** means the second phase of project evaluation where the public entity has completed the conceptual stage and accepted the proposal and may request additional information regarding a proposed project prior to entering into competitive negotiations with one or more private entities to develop an interim or comprehensive agreement.

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

**"Interim agreement"** means an agreement between a private entity and a responsible public entity that provides for phasing of the development or operation, or both, of a qualifying project. Such phases may include, but are not limited to, design, planning, engineering, environmental analysis and mitigation, financial and revenue analysis, or any other phase of the project that constitutes activity on any part of the qualifying project.

**"Lease payment"** means any form of payment, including a land lease, by a public entity to the private entity for the use of a qualifying project.

**"Lifecycle cost analysis"** means an analysis that calculates cost of an asset over its entire life span and includes the cost of planning, constructing, operating, maintaining, replacing, and when applicable, salvaging the asset. Although one proposal may have a lower initial construction cost, it may not have the lowest lifecycle cost once maintenance, replacement, and salvage value is considered.

**"Material default"** means any default by the private entity in the performance of its duties that jeopardizes adequate service to the public from a qualifying project.

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

**"Opportunity cost"** means the cost of passing up another choice when making a decision or the increase in costs due to delays in making a decision.

**"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 the Commonwealth, any public body politic and corporate, or any regional entity that serves a public purpose.

**"Qualifying project"** means (i) any education facility, including, but not limited to a school building, any functionally related and subordinate facility and land of a school building (including any stadium or other facility primarily used for school events), and any depreciable property provided for use in a school facility that is operated as part of the public school system or as an institution of higher education; (ii) any building or facility that meets a public purpose and is developed or operated by or for any public entity; (iii) any improvements, together with equipment, necessary to enhance public safety and security of buildings to be principally used by a public entity; (iv) utility and telecommunications and other communications infrastructure; (v) a recreational facility; (vi) technology infrastructure and services, including, but not limited to, telecommunications, automated data processing, word processing and management information systems, and related information, equipment, goods and services; (vii) any technology, equipment, or infrastructure designed to deploy wireless broadband services to schools, businesses, or residential areas; or (viii) any improvements necessary or desirable to any unimproved locally- or state-owned real estate.

**"Responsible public entity"** means a public entity that has the power to develop or operate the applicable qualifying project.

**"Revenues"** means all revenues, income, earnings, user fees, lease payments, or other service payments arising out of or in connection with supporting the development or operation of a qualifying project, including without limitation, money received as grants or otherwise from the

United States of America, from any public entity, or from any agency or instrumentality of the foregoing in aid of such facility.

**"Service contract"** means a contract entered into between a public entity and the private entity pursuant to § 56-575.5.

**"Service payments"** means payments to the private entity of a qualifying project pursuant to a service contract.

**"State"** means the Commonwealth of Virginia.

**"User fees"** mean the rates, fees, or other charges imposed by the private entity of a qualifying project for use of all or a portion of such qualifying project pursuant to the comprehensive agreement pursuant to § 56-575.9.