SCOTT

VIRGINIA

At a meeting of the Scott County Board of Supervisors begun and held in the Supervisors' meeting room located at the Community Services Building in Gate City, Virginia on Wednesday the 1st day of October, 2025 at 9:00 a.m.

PRESENT: Darrel W. Jeter
L. Michele Glover – Vice-Chairman
Eddie N. Skeen
Michael K. Brickey
Danny M. Casteel
Christopher S. Maness – Chairman
Stefanie C. Addington

ABSENT: None.

Chairman Chris Maness called the meeting to order.

Supervisor Eddie Skeen gave the invocation and led the Pledge of Allegiance.

On a motion by Eddie N. Skeen, duly seconded by L. Michele Glover, this Board hereby amends the agenda by adding Commissioner of the Revenue and Treasurer to the agenda under item 14.

Voting aye: Darrel W. Jeter, L. Michele Glover, Eddie N. Skeen, Michael K. Brickey, Danny M. Casteel, Christopher S. Maness, and Stefanie C. Addington.

Voting nay: None.

On a motion by L. Michele Glover, duly seconded by Stefanie C. Addington, this Board hereby approves the September 3, 2025 minutes.

Voting aye: Darrel W. Jeter, L. Michele Glover, Eddie N. Skeen, Michael K. Brickey, Danny M. Casteel, Christopher S. Maness, and Stefanie C. Addington.

Voting nay: None.

Chairman Chris Maness opened Citizen Expression Period to receive public comments.

Peggy Tyus from Snowflake Road addressed 252 miles of dirt roads in Scott County. She noted the maintenance needed to keep all dirt roads passable by the Virginia Department of Transportation. Ms. Tyus noted some washed out areas on Snowflake Road and suggested that Delegate Kilgore and Senator Pillion get more funding for roads. She pointed out that the Riverside Property is getting some attention. Ms. Tyus requested that Snowflake Road remain on the Six Year Plan.

Bobbie Powers thanked Shawn Grizzle with the Scott County Fire Department. She stated that her water was disconnected, and he brought water for her farm animals. She went on to say that she would like for the Board to identify the statute that expressly authorizes the county or School Board to tax local citizens for schooling cost of non-residents. Under Dillon's Rule, Ms. Powers stated that any authority to do this be necessarily implied. Without that, the levy may be beyond legal authority. She noted that 22.1-3 authorizes education of resident children and 22.1-5 only allows resident and non-resident admission if contracts exist to share cost. Unless a statute can be sited, that authorizes the county to levy local property tax for the benefit of Tennessee residents, the tax is beyond the scope under Dillon's Rule. She requested that the Board produce the exact statutory citation and not just a generalized reference. She inquired about the county entering into any formal reciprocal or interstate agreements with Tennessee school districts or the State of Tennessee to allow cross-border schooling cost sharing. If yes, she requested a copy of any agreement. If no, she questioned the legal basis obligating local taxpayers to pay for out-of-state children. If no written contract with Tennessee or its local districts exist, she stated that the Board is admitting non-residents without any lawful cost sharing. That would mean local citizens alone are subsidizing Tennessee children. Ms. Powers requested confirmation in writing if such a contract exists. She inquired about the County Attorney or outside council having a written legal opinion that evaluates whether the board's practice is consistent with Virginia case law regarding Dillon's Rule and local taxation limit. If so, she asked that it be released to the public. If not, she questioned why one has not been prepared before imposing these changes. If the attorney has reviewed this, Ms. Powers stated that a written opinion should exist. Citizens have a right to know the legal justification for cross-border taxation. If it is not released, Ms. Powers stated that signals either it does not exist or the reasoning is weak. She pointed out that transparency demands publication. If a future court determines that taxing local citizens for out-of-state students' cost was unlawful or unauthorized, she inquired about a plan for refunds, waivers, or relief for those citizens who already paid. Ms. Powers questioned whether the Board will suspend further collection until legal certainty is obtained. She noted that the county is being exposed to potential retroactive liability. Courts have required restitution in cases of unlawful levies. A prudent board would at least acknowledge the risk rather than dismiss it. She questioned the financial impact on existing taxpayers of this cross-border subsidy. Also, she requested the cost benefit breakdown. Ms. Powers inquired about the amount of burden that falls upon current residents versus the benefit by out-of-state students. She requested line item figures for non-resident students, actual per pupil costs, and tuition or reimbursement collected. In addition, she requested the net subsidy with Riverside Development being the owner's or the county's property. Also, she inquired about performance bonds, escrow accounts, or clawback provisions required from the developer to ensure that cost overruns, infrastructure maintenance, or failed growth do not shift the burden onto local taxpayers. Ms. Powers requested answers to her questions at the next meeting.

James McDavid and Doug Jones addressed the Board about Route 654 Horton Summit Road. They presented emails concerning improvements to the road and pointed out that the road was supposed to be fully funded in 2023. There were tree markings for preparation of tree removal, but those markings have faded. When the Six Year Plan was presented to the Scott County Board of Supervisors in May 2018, Horton Summit Road was originally to begin receiving upgrades following Spurlock Hollow which was completed months ago. Mr. McDavid and Mr. Jones stated that they are getting mixed information and told that the funds were canceled. Construction was set to begin on Horton Summit Road in 2025. Inflation factors caused several projects to be delayed. The Horton Summit Road project was fully funded in July 2024. That opened the door for preliminary construction of the road. Horton Summit Road is the next project in the Rural Rustic Roads Program and should have begun in the spring of 2025. Therefore, they inquired as to why the project was delayed.

Chris Maness noted that the Board will reach out to Mr. Sumpter. Also, Chairman Maness reported that the Board has not been informed that the funding was canceled and does not believe that they can cancel the funding without a board vote.

Supervisor Skeen pointed out that projects can be delayed because the state does not allocate funds. At that point, it would be kicked back a year. He went on to say that Horton Summit Road is on the schedule next and should have been done this past spring. Supervisor Skeen stated that he would follow-up and be back in touch.

Chairman Maness stated that Allan Sumpter with the Virginia Department of Transportation assured him that Horton Summit Road would be completed; however, it seems like they have delayed it, and there needs to be an explanation.

Supervisor Darrel Jeter pointed out that this could have been delayed due the Hurricane Helene clean-up.

Chairman Maness stated that the Board did not vote to remove funding for this project.

Supervisor Eddie Skeen stated that he should have an answer sometime this week and will be in contact with Mr. McDavid and Mr. Jones.

In addition, Mr. McDavid reported severe road damage off U.S. Highway 23 on Natural Tunnel Parkway behind McDonald’s where big trucks come in and out for diesel fuel. He went on to say that potholes have been there for months. For some reason, it is not being addressed.

Supervisor Skeen replied that he would tell Mr. McDavid how to submit a work order when he gets back in touch with him about Horton Summit Road.

Gary Baker thanked Virginia Department of Transportation for Boohers Chapel Road maintenance. The side ditches and tiles have been cleaned out. He noted that Wilma Blessing who lives on Grover Cleveland Road next to Weber City School is concerned about that road and her property. Mr. Baker pointed out that Ms. Blessing would like for someone to look at that situation. He went on to say that the Board should contact the two ladies running for Governor about reinstating Virginia Department of Transportation funding as it was in 2009.

Gary McNew from the Stanleytown area of Scott County addressed the Board. Mr. McNew stated that his daughter applied for the County Administrator position, and he is not here to complain about her not getting the job. He went on to say the problem is with the Board not giving her an interview when she has a master degree in business and specialized in accounting. Mr. McNew pointed out that the vote was thrown to Bill Dingus. He questioned what makes Mr. Dingus uniquely qualified. Mr. McNew reported that Mr. Dingus went to Lincoln Memorial University for Wildlife, Fish, and Wetland Science and Management. Therefore, Mr. McNew questioned what makes him qualified. Mr. McNew questioned the County Administrator Josh Wilson about being overwhelmed or so incompetent that he needs an Assistant County Administrator.

Mr. Wilson replied that Mr. Dingus is an asset to the community and county, and his service through the years is much appreciated with the Board and with himself.

Mr. McNew asked why Mr. Wilson actually needs the help.

Mr. Wilson replied that the Public Works Director and an Assistant County Administrator are needed.

Mr. McNew replied that he gets home about three times per year; however, he does watch the meetings on YouTube. Mr. McNew pointed out that he always hears discussion about raising taxes. He questioned why the Board does not try to think about ways to cut expenses. He added that there are no jobs in this county, no good places to eat, no malls, and no new car dealerships. Mr. McNew questioned what this county has to offer for the taxes being charged.

Hearing no further comments, Chairman Maness closed Citizen Expression Period.

Supervisor Eddie Skeen stated that he does not expect the Board to respond today to the information Ms. Powers requested; however, the next meeting would be appropriate to respond. He went on to say that her list was detailed, and he suggested asking her to submit a list.

Chairman Maness asked Mr. Skeen if he has contact information for her.

Mr. Skeen replied no, but he is sure that it can be obtained. He went on to say that Ms. Powers had a couple questions for the Economic Development Authority. He pointed out that Mr. Kilgore will be addressing the Board later today, and he can address those items at that time.

Chairman Chris Maness opened a public hearing on the possible adoption of an Ordinance to Amend and Reenact in its Entirety the Scott County Public Procurement Ordinance to reflect the law as it now reads in Title 2.2, Chapters 43 and 43.1 of the Code of Virginia.

Hearing no comments, Chairman Maness closed the public hearing.

On a motion by Stefanie C. Addington, duly seconded by L. Michele Glover, this Board hereby adopts the following:

SCOTT COUNTY

PUBLIC PROCUREMENT ORDINANCE

ORDINANCE NO. 2025-03

AMENDED: OCTOBER 1, 2025

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ORDINANCE NO. 2025-03

SCOTT COUNTY PUBLIC PROCUREMENT ORDINANCE

Be it ordained by the Board of Supervisors of Scott County that the Scott County Public Procurement Ordinance is hereby amended to reflect the law as it now reads in Title 2.2, Chapters 43 and 43.1 of the Code of Virginia (1950) and the entire ordinance as thus amended is reenacted and shall read as follows:

ARTICLE 1.

General Provisions.

Section 1. Title; purpose; applicability.

A. This ordinance may be cited as the Scott County Public Procurement Ordinance.

B. The purpose of this ordinance is to enunciate County policies pertaining to governmental procurement from nongovernmental sources pursuant to the *Virginia Public Procurement Act* to include governmental procurement which may or may not result in monetary consideration for either party. This ordinance and the *Public Procurement Act* apply whether the consideration is monetary or nonmonetary and regardless of whether the public body, the contractor, or some third party is providing the consideration.

C. Procurement of any and all construction, goods or services for any department, office, agency, board, commission, authority, constitutional or County officer or employee of Scott County, including but not limited to the Scott County School Board, the Scott County Department of Social Services and all public bodies solely appointed by the Scott County Board of Supervisors shall conform to the provisions of this ordinance and the Scott County Purchasing Manual.

Section 2. Implementation. The implementation of the provisions of this ordinance shall be coordinated by and shall be under the supervision of the Scott County Administrator and the County Purchasing Administrator.

Section 3. Definitions. The words defined in this section shall have the meanings set forth below throughout this ordinance.

"*Competitive negotiation*" is the method of contractor selection set forth in Article 1, Section 5 of this ordinance.

"*Competitive sealed bidding*" is the method of contractor selection set forth in Article 1, Section 4 of this ordinance.

"*Construction*" means building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property.

"*Goods*" means all material, equipment, supplies, printing, and automated data processing hardware and software.

"Informality" means a minor defect or variation of a bid or proposal from the exact requirements of the Invitation to Bid, or the Request for Proposal, which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.

"Nonprofessional services" means any services not specifically identified as professional services in the definition of professional services.

"Potential bidder or offeror" for the purposes of Article 5, Section 4 and Article 5, Section 8 of this ordinance means a person who, at the time a public body negotiates and awards or proposes to award a contract, is engaged in the sale or lease of goods, or the sale of services, insurance or construction, of the type to be procured under such contract, and who at such time is eligible and qualified in all respects to perform that contract, and who would have been eligible and qualified to submit a bid or proposal had the contract been procured through competitive sealed bidding or competitive negotiation.

"Professional services" means work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy or professional engineering.

"Public body" means any department, office, agency, commission, authority, constitutional or county office of Scott County, including but not limited to the Scott County Board of Supervisors, the Scott County School Board, the Scott County Department of Social Services, and all public bodies solely appointed by the Scott County Board of Supervisors.

"*Public contract*" means an agreement between a public body and a nongovernmental source that is enforceable in a court of law.

"*Responsible bidder*" or "*offeror*" means a person who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability which will assure good faith performance, and who has been prequalified, if required.

"*Responsive bidder*" means a person who has submitted a bid that conforms in all material respects to the Invitation to Bid.

"*Reverse auctioning*" means a procurement method wherein bidders are invited to bid on specified goods or nonprofessional services through real-time electronic bidding, with the award being made to the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed and bidders shall have the opportunity to modify their bid prices for the duration of the time period established for bid opening.

"*Services*" means any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.

Section 4. Process for competitive sealed bidding.

The process for competitive sealed bidding shall include the following:

1. Issuance of a written Invitation to Bid containing or incorporating by reference the specifications and contractual terms and conditions applicable to the procurement. Unless the public body has provided for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite qualifications of potential contractors. Any locality may include in the Invitation to Bid criteria that may be used in determining whether a bidder who is not prequalified by the Virginia Department of Transportation is a responsible bidder pursuant to § 2.2-4301 of the Code of Virginia (1950), as amended. Such criteria may include a history or good faith assurances of (i) completion by the bidder and any potential subcontractors of specified safety training programs established by the U.S. Department of Labor, Occupational Safety and Health Administration; (ii) participation by the bidder and any potential subcontractors in apprenticeship training programs approved by state agencies or the U.S. Department of Labor; or (iii) maintenance by the bidder and any potential subcontractors of records of compliance with applicable local, state, and federal laws. No Invitation to Bid for construction services shall condition a successful bidder's eligibility on having a specified experience modification factor. When it is impractical to prepare initially a purchase description

to support an award based on prices, an Invitation to Bid may be issued requesting the submission of unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation;

2. Public notice of the Invitation to Bid at least 10 days prior to the date set for receipt of bids by posting on the Department of General Services' central electronic procurement website or the Scott County website. In addition, public bodies may publish in a newspaper of general circulation. In addition, bids may be solicited directly from potential contractors. Any additional solicitations shall include certified businesses selected from a list made available by the Department of Small Business and Supplier Diversity;

3. Public opening and announcement of all bids received;

4. Evaluation of bids based upon the requirements set forth in the Invitation to Bid, which may include special qualifications of potential contractors, life-cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability; and

5. Award to the lowest responsive and responsible bidder. When the terms and conditions of multiple awards are so provided in the Invitation to Bid, awards may be made to more than one bidder.

For the purposes of subdivision 1, "experience modification factor" means a value assigned to an employer as determined by a rate service organization in accordance with its uniform experience rating plan required to be filed pursuant to subsection D of § 38.2-1913 of the Code of Virginia (1950), as amended.

Section 5. Process for competitive negotiation.

A. The process for competitive negotiation shall include the following:

1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors that will be used in evaluating the proposal, indicating whether a numerical scoring system will be used in evaluation of the proposal, and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities, specifications or qualifications that will be required. In the event that a numerical scoring system will be used in the evaluation of proposals, the point values assigned to each of the evaluation criteria shall be included in the Request for Proposal or posted at the location designated for public posting of procurement notices prior to the due date and time for receiving proposals. No Request for Proposal for construction authorized by this section shall condition a successful offeror's eligibility on having a specified experience modification factor;

2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of proposals by posting on the Department of General Services' central electronic procurement website or the Scott County website. Public bodies may also publish in a newspaper of general circulation in the area in which the contract is to be performed so as to provide reasonable notice to the maximum number of offerors that can be reasonably anticipated to submit proposals in response to the particular request. Posting on the Department of General Services’ central electronic procurement website shall be required of any local public body if such local public body elects not to publish notice of the Request for Proposal in a newspaper of general circulation in the area in which the contract is to be performed. Local public bodies are encouraged to utilize the Department of General Services’ central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth’s procurement opportunities. In addition, proposals may be solicited directly from potential contractors. Any additional solicitations shall include certified businesses selected from a list made available by the Department of Small Business and Supplier Diversity; and

3. For goods, nonprofessional services, and insurance, selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. The offeror shall state any exception to any contractual terms or conditions, including any liability provisions contained in the Request for Proposal in writing at the time of responding to such Request for Proposal if so requested by the public body. Such exceptions shall be

considered during negotiation but shall not be used as a basis for scoring or evaluating which offerors are selected for negotiations. Price shall be considered, but need not be the sole or primary determining factor. After negotiations have been conducted with each offeror so selected, the public body shall select the offeror which, in its opinion, has made the best proposal and provides the best value, and shall award the contract to that offeror. When the terms and conditions of multiple awards are so provided in the Request for Proposal, awards may be made to more than one offeror. Should the public body determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror; or

4. For professional services, the public body shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. In addition, offerors shall be informed of any ranking criteria that will be used by the public body in addition to the review of the professional competence of the offeror. The Request for Proposal shall not, however, request that offerors furnish estimates of man-hours or cost for services. At the discussion stage, the public body may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. In accordance with § 2.2-4342 of the Code of Virginia (1950), as amended, proprietary information from competing offerors shall not be disclosed to the public or to competitors. For architectural or engineering services, the public body shall not request or require offerors to list any exceptions to proposed contractual terms and conditions, unless such terms and conditions are required by statute, regulation, ordinance, or standards developed pursuant to § 2.2-1132 of the Code of Virginia (1950), as amended, until after the qualified offerors are ranked for negotiations. At the conclusion of discussion, outlined in this subdivision, on the basis of evaluation factors published in the Request for Proposal and all information developed in the selection process to this point, the public body shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious.

Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the public body can be negotiated at a price considered fair and reasonable and pursuant to contractual terms and conditions acceptable to the public body, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price.

Notwithstanding the foregoing, if the terms and conditions for multiple awards are included in the Request for Proposal, a public body may award contracts to more than one offeror.

Should the public body determine in writing and in its sole discretion that only one offeror is fully qualified or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

B. Multiphase professional services contracts satisfactory and advantageous to the completion of large, phased, or long-term projects may be negotiated and awarded based on a fair and reasonable price for the first phase only, where the completion of the earlier phases is necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases. Prior to entering into any such contract, the public body shall (i) state the anticipated intended total scope of the project and (ii) determine in writing that the nature of the work is such that the best interests of the public body require awarding the contract.

For the purposes of subdivision A 1, "experience modification factor" means a value assigned to an employer as determined by a rate service organization in accordance with its uniform experience rating plan required to be filed pursuant to subsection D of § 38.2-1913 of the Code of Virginia (1950), as amended.

ARTICLE 2.

Contract Formation and Administration.

Section 1. Methods of procurement.

A. All public contracts with nongovernmental contractors for the purchase or lease of goods, or for the purchase of services, insurance, or construction, shall be awarded after competitive sealed bidding, or competitive negotiation as provided in this section, unless otherwise authorized by law. *Effective January 1, 2025:* All local public bodies shall provide an option to submit bids or proposals through eVA or other electronic means. In cases where bids or proposals are submitted electronically, the local public body may also require a certain number of paper submissions for review purposes.

B. Professional services shall be procured by competitive negotiation.

C. Goods, services other than professional services, and insurance may be procured by competitive sealed bidding or competitive negotiation.

Upon a written determination made in advance by the public body, that competitive negotiation is either not practicable or not fiscally advantageous, insurance may be procured through a licensed agent or broker selected in the manner provided for the procurement of things other than professional set forth in Article 1, Section 5 of this ordinance. The basis for this determination shall be documented in writing and shall be forwarded to the Scott County Purchasing Agent.

D. Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used in the following instances:

1. By any public body on a fixed price design-build basis or construction management basis as provided in Article 7; or

2. By any public body for the construction of highways and any draining, dredging, excavation, grading or similar work upon real property upon a determination made in advance by the public body and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination.

E. Upon a determination in writing that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination and shall be forwarded to the Scott County Purchasing Agent. The public body shall issue a written notice stating that only one source was determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted on the Department of General Services' central electronic procurement website or the Scott County website and in addition, the public body may publish in a newspaper of general circulation on the day the public body awards or announces its decision to award the contract, whichever occurs first.

F. In case of emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file and shall be forwarded to the Scott County Purchasing Agent. The public body shall issue a written notice stating that the contract is being awarded on an emergency basis, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted on the Department of General Services' central electronic procurement website or the Scott County website, and in addition, the public body may publish in a newspaper of general circulation on the day the public body awards or announces its decision to award the contract, whichever occurs first, or as soon thereafter as is practicable.

G. The Scott County Board of Supervisors may establish purchase procedures, if adopted in writing, not requiring competitive sealed bids or competitive negotiation for single or term contracts for:

1. Goods and services other than professional services and non-transportation-related construction, if the aggregate or the sum of all phases is not expected to exceed $50,000; and

2. Transportation-related construction, if the aggregate or sum of all phases is not expected to exceed $35,000.

However, such small purchase procedures shall provide for competition wherever practicable.

Such purchase procedures may allow for single or term contracts for professional services without requiring competitive negotiation, provided the aggregate or the sum of all phases is not expected to exceed $20,000.

All public bodies proceeding with purchases under this subsection shall post a public notice on the Department of General Services' central electronic procurement website or other appropriate websites.

H. Upon a determination made in advance by the public body and set forth in writing that the purchase of goods, products or commodities from a public auction sale is in the best interests of the public, such items may be purchased at the auction, including online public auctions. The writing shall document the basis for this determination and shall be forwarded to the Scott County Purchasing Agent.

I. The purchase of goods or nonprofessional services, but not construction or professional services, may be made by reverse auctioning.

Section 2. Architectural and professional engineering term contracting; limitations.

A. A contract for architectural or professional engineering services relating to multiple projects may be awarded by a public body, provided (i) the projects require similar experience and expertise, (ii) the nature of the projects is clearly identified in the Request for Proposal, and (iii) the contract is limited to a term of one year or when the cumulative total project fees reach the maximum authorized in this section, whichever occurs first.

Such contracts may be renewable for three additional terms at the option of the public body. Any unused amounts from one contract term shall not be carried forward to any additional term, except as otherwise provided by the Restructured Higher Education Financial and Administrative Operations Act (§ 23.1-1000 et seq. of the Code of Virginia (1950), as amended). The fair and reasonable prices as negotiated shall be used in determining the cost of each project performed.

The sum of all projects performed in a contract term shall not exceed $10 million, and the fee for any single project shall not exceed $2.5 million.

B. Competitive negotiations for such architectural or professional engineering services contracts may result in awards to more than one offeror, provided (i) the Request for Proposal so states and (ii) the public body has established procedures for distributing multiple projects among the selected contractors during the contract term. Such procedures shall prohibit requiring the selected contractors to compete for individual projects based on price.

Section 3. Job order contracting; limitations.

A. A job order contract may be awarded by a public body for multiple jobs, provided (i) the jobs require similar experience and expertise, (ii) the nature of the jobs is clearly identified in the solicitation, and (iii) the contract is limited to a term of one year or when the cumulative total project fees reach the maximum authorized in this section, whichever occurs first. Contractors may be selected through either competitive sealed bidding or competitive negotiation.

B. Such contracts may be renewable for three additional one-year terms at the option of the public body. The fair and reasonable prices as negotiated shall be used in determining the cost of each job performed, and the sum of all jobs performed in a one-year contract term shall not exceed $10 million. Individual job orders shall not exceed $1 million.

C. For the purposes of this section, any unused amounts from one contract term shall not be carried forward to any additional term.

D. Order splitting with the intent of keeping a job order under the maximum dollar amounts prescribed in subsection B is prohibited.

E. No public body shall issue or use a job order, under a job order contract, solely for the purpose of receiving professional architectural or engineering services that constitute the practice of architecture or the practice of engineering as those terms are defined in § 54.1-400. However, professional architectural or engineering services may be included on a job order where such professional services (i) are incidental and directly related to the job, (ii) do not exceed $25,000 per job order, and (iii) do not exceed $75,000 per contract term.

F. Job order contracting shall not be used for construction, maintenance, or asset management services for a highway, bridge, tunnel, or overpass. However, job order contracting may be used for safety improvements or traffic calming measures for individual job orders up to $250,000, subject to the maximum annual threshold amount established in this section.

Section 4. Cooperative procurement.

Any public body may participate in, sponsor, conduct, or administer a joint procurement agreement or in conjunction with one or more other public bodies, or public agencies or institutions or localities of the several states, of the United States or its territories, the District of Columbia, or the U.S. General Services Administration, for the purpose of combining requirements to increase efficiency or reduce administrative expenses in any acquisition of goods, services, or construction as provided in § 2.2-4304 of the Code of Virginia (1950), as amended.

Section 5. Competitive procurement by localities on state-aid projects.

No contract for the construction of any building or for an addition to or improvement of an existing building by any public body for which state funds of not more than $50,000 in the aggregate or for the sum of all phases of a contract or project either by appropriation, grant-in-aid or loan, are used or are to be used for all or part of the cost of construction shall be let except after competitive sealed bidding or after competitive negotiation as provided in this ordinance. The procedure for the advertising for bids or for proposals and for letting of the contract shall conform, mutatis mutandis, to this ordinance.

Section 6. Modification of the contract.

A. A public contract may include provisions for modification of the contract during performance, but no fixed-price contract may be increased by more than twenty-five percent of the amount of the contract or $50,000, whichever is greater, without the advance written approval of the public body. In no event may the amount of any contract, without adequate consideration, be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of an error in its bid or offer.

B. Any public body may extend the term of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract.

C. Nothing in this section shall prevent any public body from placing greater restrictions on contract modifications.

D. The provisions of this section shall not limit the amount a party to a public contract may claim or recover against a public body pursuant to Section 7 of Article 5 of this ordinance or any other applicable statute or regulation. Modifications made by a political subdivision that fail to comply with this section are voidable at the discretion of the governing body, and the unauthorized approval of a modification cannot be the basis of a contractual claim as set forth in Article 5, Section 7.

Section 7. Discrimination prohibited; participation of small, women-owned, minority-owned, military family-owned, and service disabled veteran-owned businesses and employment services organizations.

A. In the solicitation or awarding of contracts, no public body shall

discriminate against a bidder or offeror because of race, religion, color, sex, sexual orientation, gender identity, national origin, age, disability, status as a service disabled veteran, status as a military family, or any other basis prohibited by state law relating to discrimination in employment. Whenever solicitations are made, each public body shall include businesses selected from a list made available by the Department of Small Business and Supplier Diversity, which list shall include all companies and organizations certified by the Department.

B. All public bodies shall establish programs consistent with all provisions of this ordinance and § 2.2-4310 of the Code of Virginia (1950), as amended, to facilitate the participation of small businesses, businesses owned by women, minorities and service disabled veterans, military family-owned businesses, and employment services organizations in procurement transactions.

Section 8. Employment discrimination by contractor prohibited; required contract provisions.

All public bodies shall include in every contract of more than $10,000 the following provisions:

1. During the performance of this contract, the contractor agrees as follows:

a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.

c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

2. The contractor will include the provisions of the foregoing paragraphs a, b and c in every subcontract or purchase order of over $10,000, so that the provisions will be binding upon each subcontractor or vendor.

Section 9. Compliance with federal, state, and local laws and federal immigration law; required contract provisions.

All public bodies shall provide in every written contract that the contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

Section 10. Compliance with state law; foreign and domestic businesses authorized to transact business in the Commonwealth.

A. All public bodies shall include in every written contract a provision that a contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise required by law.

B. Pursuant to competitive sealed bidding or competitive negotiation, all public bodies shall include in the solicitation a provision that requires a bidder or offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 to include in its bid or proposal the identification number issued to it by the State Corporation Commission. Any bidder or offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law shall include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized.

C. Any bidder or offeror described in subsection B that fails to provide the required information shall not receive an award unless a waiver of this requirement and the administrative policies and procedures established to implement this section is granted by the County Administrator.

D. Any business entity described in subsection A that enters into a contract with a public body pursuant to this chapter shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract.

E. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

Section 11. Compliance with state law; contract terms inconsistent with state law.

A. As used in this section, "information technology goods and services" means communications, telecommunications, automated data processing, applications, databases, data networks, management information systems, and other related goods and services.

B. No term or provision in any public contract for the acquisition of information technology goods or services shall be valid or enforceable to the extent that it is in conflict with Virginia law. A public contract containing such a term or provision shall otherwise remain enforceable.

C. Any term or provision in such a public contract that (i) makes the public contract subject to, governed by, or interpreted under the laws of another state or country or (ii) requires or permits any litigation or other dispute resolution proceeding arising from the public contract to be conducted in another state or country shall be void. Such public contract shall instead by deemed to provide for the application of the law of the Commonwealth of Virginia, without regard to such contract's choice of law provisions, and to provide for jurisdiction in the courts of the Commonwealth.

D. The provisions of this section shall only apply to a county, city, town, political subdivision, or public institution of higher education, or to a public body listed as an independent agency in the appropriation act, if its governing body has adopted the provisions of this section as part of its procurement policies and procedures.

Section 12. Procurement of imported goods; forced and indentured child labor prohibition.

A. For the purposes of this section, "forced or indentured child labor" means all

work or service (i) exacted from any person younger than 18 years of age under the menace of any penalty for the nonperformance of such work or service and for which such person does not offer himself voluntarily or (ii) performed by any person younger than 18 years of age pursuant to a contract the enforcement of which can be accomplished by process or penalties.

B. A public body that enters into a public contract for goods or services that

exceeds $10,000 shall include in such a public contract provisions (i) prohibiting the use of forced or indentured child labor in the performance of the contract and (ii) requiring that the contractor include such prohibition in every subcontract or purchase order that exceeds $10,000, so that the prohibition will be binding upon each subcontractor or vendor.

Section 13. Drug-free workplace to be maintained by contractor; required contract provisions.

All public bodies shall include in every contract over $10,000 the following provisions:

During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over $10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "*drug-free workplace*" means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

Section 14. Use of brand names.

Unless otherwise provided in the Invitation to Bid, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make or manufacturer named and shall be deemed to convey the general style, type, character, and quality of the article desired. Any article that the public body in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.

Section 15. Comments concerning specifications.

Every public body awarding public contracts shall establish procedures whereby comments concerning specifications or other provisions in Invitations to Bid or Requests for Proposal can be received and considered prior to the time set for receipt of bids or proposals or award of the contract.

Section 16. Prequalification generally; prequalification for construction.

A. Prospective contractors may be prequalified for particular types of supplies, services, insurance or construction, and consideration of bids or proposals limited to prequalified contractors. Any prequalification procedure shall be established in writing by the public body and sufficiently in advance of its implementation to allow potential contractors a fair opportunity to complete the process.

B. Any prequalification of prospective contractors for construction by a public body shall be pursuant to a prequalification process for construction projects adopted by the public body. Such process shall be consistent with the provisions of this subsection.

The application form used in such process shall set forth the criteria upon which the qualifications of prospective contractors will be evaluated. The application form shall request of prospective contractors only such information as is appropriate for an objective evaluation of all prospective contractors pursuant to such criteria. Such form shall allow the prospective contractor seeking prequalification to request, by checking the appropriate box, that all information voluntarily submitted by the contractor pursuant to this subsection shall be considered a trade secret or proprietary information subject to the provisions of Article 2, Section 32, of this ordinance.

In all instances in which the public body requires prequalification of potential contractors for construction projects, advance notice shall be given of the deadline for the submission of prequalification applications. The deadline for submission shall be sufficiently in advance of the date set for the submission of bids for such construction so as to allow the procedures set forth in this subsection to be accomplished.

At least thirty days prior to the date established for submission of bids or proposals under the procurement of the contract for which the prequalification applies, the public body shall advise in writing each contractor who submitted an application whether that contractor has been prequalified. In the event that a contractor is denied prequalification, the written notification to such contractor shall state the reasons for such denial of prequalification and the factual basis of such reasons.

A decision by a public body denying prequalification under the provisions of this subsection shall be final and conclusive unless the contractor appeals the decision as provided in Section 1, Article 5 of this ordinance.

C. A public body may deny prequalification to any contractor only if the public body finds one of the following:

1. The contractor does not have sufficient financial ability to perform the contract that would result from such procurement. If a bond is required to ensure performance of a contract, evidence that the contractor can acquire a surety bond from a corporation included on the United States Treasury list of acceptable surety corporations in the amount and type required by the public body shall be sufficient to establish the financial ability of such contractor to perform the contract resulting from such procurement;

2. The contractor does not have appropriate experience to perform the construction project in question;

3. The contractor or any officer, director or owner thereof has had judgments entered against him within the past ten years for the breach of contracts for governmental or nongovernmental construction, including, but not limited to, design-build or construction management;

4. The contractor has been in substantial noncompliance with the terms and conditions of prior construction contracts with a public body without good cause. If the public body has not contracted with a contractor in any prior construction contracts, the public body may deny prequalification if the contractor has been in substantial noncompliance with the terms and conditions of comparable construction contracts with another public body without good cause. A public body may not utilize this provision to deny prequalification unless the facts underlying such substantial noncompliance were documented in writing in the prior construction project file and such information relating thereto given to the contractor at that time, with the opportunity to respond;

5. The contractor or any officer, director, owner, project manager, procurement manager or chief financial official thereof has been convicted within the past ten years of a crime related to governmental or nongovernmental construction or contracting, including, but not limited to, a violation of (i) Article 6 (§ 2.2-4367 et seq.) of the *Virginia Public Procurement Act*, (ii) the *Virginia Governmental Frauds Act* (§ 18.2-498.1 et seq.), (iii) Chapter 4.2 (§ 59.1-68.6 et seq.) of Title 59.1 of the Code of Virginia (1950), as amended, or (iv) any substantially similar law of the United States or another state;

6. The contractor or any officer, director or owner thereof is currently debarred pursuant to an established debarment procedure from bidding or contracting by any public body, agency of another state or agency of the federal government; and

7. The contractor failed to provide to the public body in a timely manner any information requested by the public body relevant to subdivisions 1 through 6 of this subsection.

D. If a public body has a prequalification ordinance that provides for minority participation in municipal construction contracts, that public body may also deny prequalification based on minority participation criteria. However, nothing herein shall authorize the adoption or enforcement of minority participation criteria except to the extent that such criteria, and the adoption and enforcement thereof, are in accordance with the Constitution and laws of the United States and the Commonwealth.

E. The provisions of subsections B, C, and D shall not apply to prequalification for contracts let under § 33.1-12 of the Code of Virginia (1950), as amended.

Section 17. Negotiation with lowest responsible bidder.

Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted, except that if the bid from the lowest responsible bidder exceeds available funds, the public body may negotiate with the apparent low bidder to obtain a contract price within available funds. However, such negotiation may be undertaken only under conditions and procedures described in writing and approved by the public body prior to issuance of the Invitation to Bid and summarized therein.

Section 18. Cancellation, rejection of bids; waiver of informalities.

A. An Invitation to Bid, a Request for Proposal, any other solicitation, or any and all bids or proposals, may be canceled or rejected. The reasons for cancellation or rejection shall be made part of the contract file and a copy of the reasons shall be forwarded to the Scott County Purchasing Agent. A public body shall not cancel or reject an Invitation to Bid, a Request for Proposal, any other solicitation, bid or proposal pursuant to this section solely to avoid awarding a contract to a particular responsive and responsible bidder or offeror.

B. A public body may waive informalities in bids.

Section 19. Exclusion of insurance bids prohibited.

Notwithstanding any other provision of law, no insurer licensed to transact the business of insurance in the Commonwealth or approved to issue surplus lines insurance in the Commonwealth shall be excluded from presenting an insurance bid proposal to a public body in response to a request for proposal or an invitation to bid. Nothing in this section shall preclude a public body from debarring a prospective insurer pursuant to Section 15, Article 2 of this ordinance.

Section 20. Debarment.

A. Prospective contractors may be debarred from contracting for particular types of supplies, services, insurance or construction, for specified periods of time. Any debarment procedure shall be established in writing by the public body. Any debarment procedure may provide for debarment on the basis of a contractor's unsatisfactory performance for a public body.

B. In addition, a prospective contractor shall be debarred from contracting with

all public bodies and covered institutions whenever the Tax Commissioner so determines pursuant to § 58.1-1902 of the Code of Virginia (1950), as amended.

Section 21. Purchase of flags of the United States and the Commonwealth by public bodies.

Notwithstanding any provision of law to the contrary, whenever a state or local public body or school division purchases a flag of the United States or a flag of the Commonwealth for public use, such flag shall be made in the United States from articles, materials, or supplies that are grown, produced, and manufactured in the United States, if available.

Section 22. (Effective until July 1, 2027) Preference for Virginia products with recycled content and for Virginia firms.

A. In the case of a tie bid, preference shall first be given to goods produced in Virginia and preference shall then be given to good produced in the United States; otherwise the tie shall be decided by lot.

B. In the case of procurement of goods by manufacturers:

1. If (i) the lowest responsive and responsible bidder is not a resident of Virginia and (ii) the bid of any Virginia resident is within 10 percent of such bid, the lowest responsive and responsible bidder that is a Virginia resident shall be granted the option to match the price of the lowest responsive and responsible bidder.

2. If the lowest responsive and responsible bidder is a resident of a state other than Virginia and such state under its laws allows a resident of that state a percentage preference or price-matching preference for the procurement of goods, a like preference shall be granted to responsive and responsible bidders who are residents of Virginia.

3. An eligible bidder that is a Virginia resident shall be granted the greater of either preference pursuant to this subsection.

C. Whenever the lowest responsive and responsible bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a percentage preference, a like preference shall be granted to the lowest responsive and responsible bidder who is a resident of Virginia and is the next lowest bidder. If the lowest responsive and responsible bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a price-matching preference, a like preference shall be granted to responsive and responsible bidders who are residents of Virginia. If the lowest bidder is a resident contractor of a state with an absolute preference, the bid shall not be considered. The Department of General Services shall post and maintain an updated list on its website of all states with an absolute preference for their resident contractor and those states that allow their resident contractors a percentage preference, including the respective percentage amounts. For purposes of compliance with this section, all public bodies may rely upon the accuracy of the information posted on this website.

D. Notwithstanding the provisions of subsections B and C, in the case of a tie bid in instances where goods are being offered, and existing price preferences have already been taken into account, preference shall be given to the bidder whose goods contain the greatest amount of recycled content.

E. For the purposes of this section, a firm or corporation shall be deemed to be a resident of Virginia if such firm or corporation has been organized pursuant to Virginia law or maintains a principal place of business within Virginia.

F. To the extent that this section conflicts with federal law or regulations and application of this section to a project or procurement would render a public body ineligible to receive federal funds for such project or procurement, such project or procurement shall be exempt from the provisions of this section.

Section 23. Preference for local products and firms; applicability.

A. In case of a tie bid, preference may be given to goods, services and construction produced in Scott County or provided by persons, firms or corporations having principal places of business in Scott County, if such a choice is available; otherwise, the tie shall be decided by lot, unless the above Section 10 applies.

B. The provisions of this section shall apply only to bids submitted pursuant to a written Invitation to Bid.

Section 24. Preference for energy-efficient and water-efficient goods.

A. As used in this section, “FEMP” means the Federal Energy Management

Program.

B. When in the course of procuring goods, if a local public body receives two or

more bids for products that are Energy Star certified, meet FEMP-designated efficiency requirements, appear on FEMP’s Low Standby Power Product List, or are Water Sense certified, such local public body may only select among those bids unless, before selecting a different bid, the local public body provides a written statement that demonstrates the cost of the products that are Energy Star certified, meet FEMP-designated efficiency requirements, appear on FEMP’s Low Standby Power Product List, or are Water Sense certified was unreasonable.

Section 25. Solar photovoltaic equipment and facilities.

No state agency, locality, or political subdivision of the Commonwealth in any request for proposal, procurement agreement, contract, ordinance, policy, permit, or accompanying document shall prohibit or otherwise exclude from use any materials contained in or products associated with solar photovoltaic equipment and facilities that are manufactured in the United States.

Section 26. Withdrawal of bid due to error.

A. A bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw his bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake in the bid, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid that shall be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

B. One of the following procedures for withdrawal of a bid shall be selected by the public body and stated in the advertisement for bids:

1. Bidder shall give notice in writing of his claim of right to withdraw his bid within two business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice; or

2. Where the public body opens the bids one day following the time fixed for the submission of bids, the bidder shall submit to the public body or designated official his original work papers, documents and materials used in the preparation of the bid at or prior to the time fixed for the opening of bids. The work papers shall be delivered by the bidder in person or by registered mail. The bidder shall have two hours after the opening of bids within which to claim in writing any mistake as defined herein and withdraw his bid. The contract shall not be awarded by the public body until the two-hour period has elapsed.

Under these procedures, the mistake shall be proved only from the original work papers, documents and materials delivered as required herein. The work papers, documents and materials submitted by the bidder shall, at the bidder's request, be considered trade secrets or proprietary information subject to the conditions of subsection F of § 2.2-4342 of the Code of Virginia (1950), as amended.

C. If a public body chooses to allow the withdrawal of bids for other than construction contracts, it shall follow the above-described procedure.

D. No bid shall be withdrawn under this section when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent.

E. If a bid is withdrawn in accordance with this section, the lowest remaining bid shall be deemed to be the low bid.

F. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.

G. The public body shall notify the bidder in writing within five business days of its decision regarding the bidder's request to withdraw its bid. If the public body denies the withdrawal of a bid under the provisions of this section, it shall state in such notice the reasons for its decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder. At the same time that the notice is provided, the pubic body shall return all work papers and copies thereof that have been submitted by the bidder.

Section 27. Contract pricing arrangements.

A. Except as prohibited herein, public contracts may be awarded on a fixed price or cost reimbursement basis, or on any other basis that is not prohibited.

B. Except in case of emergency affecting the public health, safety or welfare, no public contract shall be awarded on the basis of cost plus a percentage of cost.

C. A policy or contract of insurance or prepaid coverage having a premium computed on the basis of claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in whole or part as a percentage of such claims, shall not be prohibited by this section.

Section 28. Workers' compensation requirements for construction contractors and subcontractors.

A. No contractor shall perform any work on a construction project of a department, agency or institution of Scott County unless he (i) has obtained, and continues to maintain for the duration of the work, workers' compensation coverage required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 of the Code of Virginia (1950), as amended, and (ii) provides prior to the award of contract, on a form furnished by Scott County, evidence of such coverage.

B. The Virginia Department of General Services shall provide the form to such departments, agencies, institutions and political subdivisions. Failure of a department, agency, institution or political subdivision to provide the form prior to the award of contract shall waive the requirements of clause (ii) of subsection A.

C. No subcontractor shall perform any work on a construction project of a department, agency or institution of Scott County unless he has obtained, and continues to maintain for the duration of such work, workers' compensation coverage required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 of the Code of Virginia (1950), as amended.

Section 29. Retainage on construction contracts.

A. In any public contract for construction which provides for progress payments in installments based upon an estimated percentage of completion, the contractor shall be paid at least ninety-five percent of the earned sum when payment is due, with no more than five percent being retained to ensure faithful performance of the contract. All amounts withheld may be included in the final payment.

B. Any subcontract for a public project that provides for similar progress payments shall be subject to the provisions of this section.

Section 30. Deposit of certain retained funds on certain contracts with local governments; penalty for failure to timely complete.

A. When contracting directly with contractors for public contracts of $200,000 or more for construction of highways, roads, streets, bridges, parking lots, demolition, clearing, grading, excavating, paving, pike driving, miscellaneous drainage structures, and the installation of water, gas, sewer lines and pumping stations where portions of the contract price are to be retained, there shall be included in the Bid Proposal an option for the contractor to use an escrow account procedure for utilization of the public body's retainage funds by so indicating in the space provided in the proposal documents. In the event the contractor elects to use the escrow account procedure, the escrow agreement form included in the Bid Proposal and Contract shall be executed and submitted to the public body within fifteen calendar days after notification. If the escrow agreement form is not submitted within the fifteen-day period, the contractor shall forfeit his rights to the use of the escrow account procedure.

B. In order to have retained funds paid to an escrow agent, the contractor, the escrow agent, and the surety shall execute an escrow agreement form. The contractor's escrow agent shall be a trust company, bank or savings institution with its principal office located in the Commonwealth. The escrow agreement and all regulations adopted by the public body entering into the contract shall be substantially the same as that used by the Virginia Department of Transportation.

C. This section shall not apply to public contracts for construction for railroads, public transit systems, runways, dams, foundations, installation or maintenance of power systems for the generation and primary and secondary distribution of electric current ahead of the customer's meter, the installation or maintenance of telephone, telegraph or signal systems for public utilities and the construction or maintenance of solid waste or recycling facilities and treatment plants.

D. Any such public contract for construction with the county which includes payment of interest on retained funds, may require a provision whereby the contractor, exclusive of reasonable circumstances beyond the control of the contractor stated in the contract, shall pay a specified penalty for each day exceeding the completion date stated in the contract.

E. Any subcontract for such public project that provides for similar progress payments shall be subject to the provisions of this section.

Section 31. Public construction contract provisions barring damages for unreasonable delays declared void.

A. Any provision contained in any public construction contract that purports to waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable delay in performing such contract, either on his behalf or on behalf of his subcontractor if and to the extent the delay is caused by acts or omissions of the public body, its agents or employees and due to causes within their control shall be void and unenforceable as against public policy.

B. Subsection A shall not be construed to render void any provision of a public construction contract that:

1. Allows a public body to recover that portion of delay costs caused by the acts or omissions of the contractor, or its subcontractors, agents or employees;

2. Requires notice of any delay by the party claiming the delay;

3. Provides for liquidated damages for delay; or

4. Provides for arbitration or any other procedure designed to settle contract disputes.

C. A contractor making a claim against a public body for costs or damages due to the alleged delaying of the contractor in the performance of its work under any public construction contract shall be liable to the public body and shall pay it for a percentage of all costs incurred by the public body in investigating, analyzing, negotiating, litigating and arbitrating the claim, which percentage shall be equal to the percentage of the contractor's total delay claim that is determined through litigation or arbitration to be false or to have no basis in law or in fact.

D. A public body denying a contractor's claim for costs or damages due to the alleged delaying of the contractor in the performance of work under any public construction contract shall be liable and shall pay such contractor a percentage of all costs incurred by the contractor to investigate, analyze, negotiate, litigate and arbitrate the claim. The percentage paid by the public body shall be equal to the percentage of the contractor's total delay claim for which the public body's denial is determined through litigation or arbitration to have been made in bad faith.

Section 32. Bid bonds.

A. Except in cases of emergency, all bids or proposals for non-transportation-related construction contracts in excess of $500,000 or transportation-related projects authorized under Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2 of the Code of Virginia (1950), as amended, that are in excess of $350,000 and partially or wholly funded by the Commonwealth shall be accompanied by a bid bond from a surety company selected by the bidder that is authorized to do business in Virginia, as a guarantee that if the contract is awarded to the bidder, that bidder will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed five percent of the amount bid.

B. No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bid for which the bond was written and the next low bid, or (ii) the face amount of the bid bond.

C. Nothing in this section shall preclude a public body from requiring bid bonds to accompany bids or proposals for construction contracts anticipated to be less than $500,000 for non-transportation-related projects or $350,000 for transportation-related projects authorized under Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2 of the Code of Virginia (1950), as amended, and partially or wholly funded by the Commonwealth.

Section 33. Performance and payment bonds.

A. Upon the award of any (i) non-transportation-related public construction contract exceeding $500,000 awarded to any prime contractor or (ii) transportation-related project authorized pursuant to Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2 of the Code of Virginia (1950), as amended, exceeding $350,000 that is partially or wholly funded by the Commonwealth, the contractor shall furnish to the public body the following bonds:

1. A performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract, unless the contract is an indefinite delivery or quantity contract with a local public body and the local public body adopts an ordinance pursuant to subsection G.

2. A payment bond in the sum of the contract amount, unless the contract is an indefinite delivery or quantity contract with a local public body and the local public body adopts an ordinance pursuant to subsection G. The bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors, in the furtherance of the work provided for in the contract, and shall be conditioned upon the prompt payment for all materials furnished or labor supplied or performed in the furtherance of the work.

B. Each of the bonds shall be executed by one or more surety companies selected by the contractor that are authorized to do business in Virginia.

C. If the public body is the Commonwealth, or any agency or institution thereof, the bonds shall be payable to the Commonwealth of Virginia, naming also the agency or institution thereof. Bonds required for the contracts of other public bodies shall be payable to such public body.

D. Each of the bonds shall be filed with the public body that awarded the contract, or a designated office or official thereof.

E. Nothing in this section shall preclude a public body from requiring payment or performance bonds for construction contracts below $500,000 for non-transportation-related projects or $350,000 for transportation-related projects authorized under Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2 of the Code of Virginia (1950), as amended, and partially or wholly funded by the Commonwealth.

F. Nothing in this section shall preclude the contractor from requiring each subcontractor to furnish a payment bond with surety thereon in the sum of the full amount of the contract with such subcontractor conditioned upon the payment to all persons who have and fulfill contracts that are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract.

G. For indefinite delivery or quantity contracts awarded pursuant to subsection A, any locality may by ordinance allow the contractor awarded such contract to furnish to the local public body a performance bond and a payment bond, each of which shall be equal to the dollar amount of the individual tasks identified in the underlying contract. Such contractor shall not be required to pay the performance bond and payment bond in the sum of the contract amount if the contracting locality has adopted such an ordinance pursuant to this subsection. For purposes of this section, “indefinite delivery or quantity contract” means a contract that only requires performance of contractual obligations upon the request of the locality and which establishes an annual cap for the total work that may be authorized for such contract.

Section 34. Alternative forms of security.

A. In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check or cash escrow in the face amount required for the bond.

B. If approved by the County Attorney, a bidder may furnish a personal bond, property bond, or bank or savings institution’s letter of credit on certain designated funds in the face amount required for the bid, payment or performance bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the public body equivalent to a corporate surety’s bond.

C. The provisions of this section shall not apply to the Department of Transportation.

Section 35. Bonds on other than construction contracts.

A public body may require bid, payment, or performance bonds for contracts for goods or services if provided in the Invitation to Bid or Request for Proposal.

Section 36. Action on performance bond.

No action against the surety on a performance bond shall be brought unless within five years after completion of the contract. For the purposes of this section, completion of the contract is the final payment to the contractor pursuant to the terms of the contract. However, if a final certificate of occupancy, or written final acceptance of the project, is issued prior to final payment, the five-year period to bring an action shall commence no later than 12 months from the date of the certificate of occupancy or written final acceptance of the project.

Section 37. Actions on payment bonds; waiver of right to sue.

A. Any claimant who has a direct contractual relationship with the contractor and who has performed labor or furnished material in accordance with the contract documents in the furtherance of the work provided in any contract for which a payment bond has been given, and who has not been paid in full before the expiration of 90 days after the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, may bring an action on the payment bond to recover any amount due him for such labor or material. The obligee named in the bond need not be named a party to the action.

B. Any claimant who has a direct contractual relationship with any subcontractor but who has no contractual relationship, express or implied, with the contractor, may bring an action on the contractor’s payment bond only if he has given written notice to the contractor within 90 days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished. Notice to the contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainages with respect to labor performed or materials furnished, shall not be subject to the time limitations stated in this subsection.

C. Any action on a payment bond must be brought within one year after the day on which the person bringing such action last performed labor or last furnished or supplied materials.

D. Any waiver of the right to sue on the payment bond required by this section shall be void unless it is in writing, signed by the person whose right is waived, and executed after such person has performed labor or furnished material in accordance with the contract documents.

Section 38. Public inspection of certain records.

A. Except as provided in this section, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the *Virginia Freedom of Information Act* (§ 2.2-3700 et seq. of the Code of Virginia (1950), as amended).

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

C. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the event that the public body decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract.

D. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award, except in the event that the public body decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection only after award of the contract.

E. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.

F. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction or prequalification application submitted pursuant to subsection B of § 2.2-4317 of the Code of Virginia (1950), as amended, shall not be subject to the *Virginia Freedom of Information Act* (§ 2.2-3700 et seq. of the Code of Virginia (1950), as amended); however, the bidder, offeror or contractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary. A bidder, offeror, or contractor shall not designate as trade secrets or proprietary information (a) an entire bid, proposal, or prequalification application; (b) any portion of a bid, proposal, or prequalification application that does not contain trade secrets or proprietary information; or (c) line item prices or total bid, proposal, or prequalification application prices.

ARTICLE 3.

Exemptions and Limitations.

Section 1. Compliance with conditions on federal grants or contracts.

Where a procurement transaction involves the expenditure of federal assistance or contract funds, the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or regulations not in conformance with the provisions of this ordinance, a public body may comply with such federal requirements, notwithstanding the provisions of this ordinance, only upon the written determination of the public body, that acceptance of the grant or contract funds under the applicable conditions is in the public interest. Such determination shall state the specific provision of this ordinance in conflict with the conditions of the grant or contract. The determination shall be forwarded to the Scott County Purchasing Agent.

Section 2. Permitted contracts with certain religious organizations; purpose; limitations.

A. It is the intent of the General Assembly, in accordance with the *Personal*

Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, to authorize public bodies to enter into contracts with faith-based organizations for the purposes described in this section on the same basis as any other nongovernmental source without impairing the religious character of such organization, and without diminishing the religious freedom of the beneficiaries of assistance provided under this section.

B. For the purposes of this section, "*faith-based organization*" means a religious organization that is or applies to be a contractor to provide goods or services for programs funded by the block grant provided pursuant to the *Personal Responsibility and Work Opportunity Reconciliation Act of 1996*, P.L. 104-193.

C. Public bodies, in procuring goods or services, or in making disbursements

pursuant to this section, shall not (i) discriminate against a faith-based organization on the basis of the organization's religious character or (ii) impose conditions that (a) restrict the religious character of the faith-based organization, except as provided in subsection F, or (b) impair, diminish, or discourage the exercise of religious freedom by the recipients of such goods, services, or disbursements.

D. Public bodies shall ensure that all invitations to bid, requests for proposals,

contracts, and purchase orders prominently display a nondiscrimination statement indicating that the public body does not discriminate against faith-based organizations.

E. A faith-based organization contracting with a public body (i) shall not

discriminate against any recipient of goods, services, or disbursements made pursuant to a contract authorized by this section on the basis of the recipient's religion, religious belief, or refusal to participate in a religious practice or on the basis of race, age, color, gender, sexual orientation, gender identity, or national origin and (ii) shall be subject to the same rules as other organizations that contract with public bodies to account for the use of funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. Nothing in clause (ii) shall be construed to supersede or otherwise override any other applicable state law.

F. Consistent with the *Personal Responsibility and Work Opportunity*

Reconciliation Act of 1996, P.L. 104-193, funds provided for the expenditure pursuant to contracts with public bodies shall not be spent for religious worship, instruction, or proselytizing; however, this prohibition shall not apply to expenditures pursuant to contracts, if any, for the services of chaplains.

G. Nothing in this section shall be construed as barring or prohibiting a faith-

based organization from any opportunity to make a bid or proposal or contract on the grounds that the faith-based organization has exercised the right, as expressed in 42 U.S.C. (§ 2000 e-1 et seq.), to employ persons of a particular religion.

H. If an individual, who applies for or receives goods, services, or

disbursements provided pursuant to a contract between a public body and a faith-based organization, objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services or disbursements from an alternative provider.

The public body shall provide to each individual who applies for or receives goods, services, or disbursements provided pursuant to a contract between a public body and a faith-based organization a notice in bold face type that states: "Neither the public body's selection of a charitable or faith-based provider of services nor the expenditure of funds under this contract is an endorsement of the provider's charitable or religious character, practices, or expression. No provider of services may discriminate against you on the basis of religion, a religious belief, or your refusal to actively participate in a religious practice. If you object to a particular provider because of its religious character, you may request assignment to a different provider. If you believe that your rights have been violated, please discuss the complaint with your provider or notify the appropriate person as indicated on this form."

Section 3. Exceptions from competition for certain transactions.

A. Any public body may enter into contracts without competition for:

1. The purchase of goods or services that are produced or performed by:

a. Persons, or in schools or workshops, under the supervision of the Virginia Department for the Blind and Vision Impaired; or

b. Employment services organizations that offer transitional or supported employment services serving individuals with disabilities.

2. The purchase of legal services, provided that the pertinent provisions of Chapter 5 of the Code of Virginia (§ 2.2-500 et seq.) remain applicable, or expert witnesses or other services associated with litigation or regulatory proceedings.

B. The Scott County Economic Development Authority may enter into contracts without competition with respect to any item of cost of “authority facilities” or “facilities” as defined in § 15.2-4902 of the Code of Virginia (1950), as amended, or “facility” as defined in § 15.2-6400 of the Code of Virginia (1950), as amended.

C. Any public body may enter into contracts without competitive sealed bidding or competitive negotiation for insurance or electric utility services if purchased through an association of which it is a member if the association was formed and is maintained for the purpose of promoting the interest and welfare of and developing close relationships with similar public bodies, provided that such association has procured the insurance or electric utility services by use of competitive principles and that the public body has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public. The writing shall document the basis for this determination and shall be forwarded to the Scott County Purchasing Agent.

D. The Scott County Department of Social Services in administering public assistance and social services programs as defined in § 63.2-100 of the Code of Virginia (1950), as amended, community services boards as defined in § 37.2-100 of the Code of Virginia (1950), as amended, or any public body purchasing services under the *Virginia Comprehensive Services Act for At-Risk Youth and Families* (§ 2.2-5200 et seq.) or the *Virginia Juvenile Community Crime Control Act* (§ 16.1-309.2 et seq.) for goods or personal services for direct use by the recipients of such programs without competitive sealed bidding or competitive negotiations if the procurement is made for an individual recipient. Contracts for the bulk procurement of goods or services for the use of recipients shall not be exempted from the requirements of Section 1, Article 2, of this ordinance.

E. The Scott County School Board may authorize any or all of its public schools to enter into contracts providing that caps and gowns, photographs, class rings, yearbooks and graduation announcements will be available for purchase or rental by students, parents, faculty or other persons using nonpublic money through the use of competitive negotiation as provided in this ordinance, competitive sealed bidding not necessarily being required for such contracts. The Virginia Superintendent of Public Instruction may provide assistance to the Scott County Public School System regarding this exception from competitive sealed bidding to permit competitive negotiation for such contracts.

ARTICLE 4.

Prompt Payment.

Section 1. Definitions.

As used in this article, unless the context requires a different meaning:

“*Construction contract*” means a contract relating to the construction, alteration, repair, or maintenance of a building, structure, or appurtenance to such building or structure, including moving, demolition, and excavation connected with such building or structure, or any provision contained in any contract relating to the construction of projects other than buildings.

"*Contractor*" or "*general contractor*" means the entity who has a direct contract with any public body as discussed in Section 5 of Article 4.

"*Payment date*" means either (i) the date on which payment is due under the terms of a contract for provision of goods or services; or (ii) if such date has not been established by contract, (a) 45 days after receipt of a proper invoice by the public body or its agent responsible under the contract for approval of such invoices for the amount of payment due, or (b) 45 days after receipt of the goods or services by the local government, whichever is later.

"Subcontractor" means any entity that has a contract to supply labor or materials to the contractor to whom the contract was awarded or to any subcontractor in the performance of the work provided for in such contract.

Section 2. Exemptions.

The provisions of this article shall not apply to (i) the late payment provisions contained in any public utility tariffs prescribed by the State Corporation Commission or (ii) payments for services provided under the state plan for medical assistance identified as potentially fraudulent, abusive, or erroneous in accordance with the program established pursuant to § 32.1-319.1 of the Code of Virginia (1950), as amended, and delayed until such time as the claim can be validated..

Section 3. Retainage to remain valid.

Notwithstanding the provisions of this article, the provisions of this ordinance relating to retainage shall remain valid.

Section 4. Prompt payment of bills by public bodies.

Every public body that acquires goods or services, or conducts any other type of contractual business with a nongovernmental, privately owned enterprise, shall promptly pay for the completed delivered goods or services by the required payment date. The required payment date shall be either: (i) the date on which payment is due under the terms of the contract for the provision of the goods or services; or (ii) if such date is not established by contract, not more than forty-five days after goods or services are received or not more than forty-five days after the invoice is rendered, whichever is later.

Separate payment dates may be specified for contracts under which goods or services are provided in a series of partial executions or deliveries to the extent that the contract provides for separate payment for partial execution or delivery.

Within twenty days after the receipt of the invoice for goods or services, the public body or its agent shall notify the supplier of any defect or impropriety that would prevent payment by the payment date.

Unless otherwise provided under the terms of the contract for the provision of goods or services, every public body that fails to pay by the payment date shall pay any finance charges assessed by the supplier that shall not exceed one percent per month.

The provisions of this section shall not apply to the late payment provisions in any public utility tariffs or public utility negotiated contracts.

Section 5. Date of postmark deemed to be date payment is made.

In those cases where payment is made by mail, the date of postmark shall be deemed to be the date payment is made for purposes of this ordinance.

Section 6. Payment clauses to be included in contracts.

Any contract awarded by any agency of local government in accordance with Article 4, Section 4 of this ordinance, shall include:

1. A payment clause that obligates the contractor on a construction contract, in the event that the contractor has not received payment from the local government for work performed by a subcontractor under such contract, to be liable for the entire amount owed to such subcontractor and to pay such subcontractor within 60 days of the receipt of an invoice following satisfactory completion of the work for which the subcontractor has invoiced. Such contractor shall not be liable for amounts otherwise reducible due to the subcontractor's noncompliance with the terms of the contract. However, in the event that the contractor withholds all or a part of the amount invoiced by the subcontractor under the terms of the contract, the contractor shall notify the subcontractor within 50 days of the receipt of such invoice, in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment, specifically identifying the contractual noncompliance, the dollar amount being withheld, and the lower-tier subcontractor responsible for the contractual noncompliance. Payment by the party contracting with the contractor shall not be a condition precedent to payment to any lower-tier subcontractor, regardless of that contractor's receiving payment for amounts owed to that contractor. Any provision in a construction contract contrary to this section shall be unenforceable. Nothing in this subdivision shall be construed to (i) apply to or prohibit the inclusion of any retainage provisions in a construction contract or (ii) apply to contracts awarded solely for professional services as that term is defined in § 2.2-4301 of the Code of Virginia (1950), as amended, where the public body is contracting directly with an architectural and engineering firm.

2. A payment clause that obligates the contractor to take one of the two following actions within seven days after receipt of amounts paid to the contractor by the local government for work performed by the subcontractor under that contract:

a. Pay the subcontractor for the proportionate share of the total payment received from the agency attributable to the work performed by the subcontractor under that contract; or

b. Notify the agency of local government and subcontractor, in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

3. A payment clause that requires (i) individual contractors to provide their social security numbers and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification numbers.

4. An interest clause that obligates the contractor to pay interest to the subcontractor on all amounts owed by the contractor that remain unpaid after seven days following receipt by the contractor of payment from the agency of local government for work performed by the subcontractor under that contract, except for amounts withheld as allowed in subdivision 2 of this section.

5. An interest rate clause stating, "Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of one percent per month."

Any such contract awarded shall further require the contractor to include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section shall not be construed to be an obligation of the agency of local government. A contract modification shall not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

ARTICLE 5.

Remedies.

Section 1. Ineligibility.

A. Any bidder, offeror or contractor refused permission to participate, or disqualified from participation, in public contracts shall be notified in writing. Prior to the issuance of a written determination of disqualification or ineligibility, the public body shall (i) notify the bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five business days after receipt of the notice.

Within ten business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The public body shall issue its written determination of disqualification or ineligibility based on all information in the possession of the public body, including any rebuttal information, within five business days of the date the public body received such rebuttal information.

If the evaluation reveals that the bidder, offeror or contractor should be allowed permission to participate in the public contract, the public body shall cancel the proposed disqualification action. If the evaluation reveals that the bidder should be refused permission to participate, or disqualified from participation, in the public contract, the public body shall so notify the bidder, offeror or contractor. The notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten days after receipt of the notice by invoking administrative procedures meeting the standards of § 2.2-4365 of the Code of Virginia (1950), as amended, if available, or in the alternative by instituting legal action as provided in § 2.2-4364 of the Code of Virginia (1950), as amended.

B. If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in accordance with the Constitution of Virginia, applicable state law or regulations, the sole relief shall be restoration of eligibility.

Section 2. Appeal of denial of withdrawal of bid.

A. A decision denying withdrawal of bid under the provisions of Section 20, Article 2 of this ordinance shall be final and conclusive unless the bidder appeals the decision within ten days after receipt of the decision by invoking administrative procedures meeting the standards of Section 9, Article 5 of this ordinance, if available, or in the alternative by instituting legal action as provided in Section 8, Article 5 of this ordinance.

B. If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of this ordinance, prior to appealing, shall deliver to the public body a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next low bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.

C. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, the sole relief shall be withdrawal of the bid.

Section 3. Determination of nonresponsibility.

A. Following public opening and announcement of bids received on an Invitation to Bid, the public body shall evaluate the bids in accordance with element 4 of the definition of "Competitive sealed bidding" in Section 3, Article 1 of this ordinance. At the same time, the public body shall determine whether the apparent low bidder is responsible. If the public body so determines, then it may proceed with an award in accordance with element 5 of the definition of "Competitive sealed bidding" in Section 3, Article 1 of this ordinance. If the public body determines that the apparent low bidder is not responsible, it shall proceed as follows:

1. Prior to the issuance of a written determination of nonresponsibility, the public body shall (i) notify the apparent low bidder in writing of the results of the evaluation, (ii) disclose the

factual support for the determination, and (iii) allow the apparent low bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five business days after receipt of the notice.

2. Within ten business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The public body shall issue its written determination of responsibility based on all information in the possession of the public body, including any rebuttal information, within five business days of the date the public body received the rebuttal information. At the same time, the public body shall notify, with return receipt requested, the bidder in writing of it determination.

3. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten days after receipt of the notice by invoking administrative procedures meeting the standards of Section 9, Article 5 of this ordinance, if available, or in the alternative by instituting legal action as provided in Section 8, Article 5 of this ordinance.

The provisions of this subsection shall not apply to procurements involving the prequalification of bidders and the rights of any potential bidders under such prequalification to appeal a decision that such bidders are not responsible.

B. If, upon appeal pursuant to Section 8 or Section 9, Article 5, it is determined that the decision of the public body was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms of the Invitation to Bid, and the award of the contract in question has not been made, the sole relief shall be a finding that the bidder is a responsible bidder for the contract in question or directed award as provided in subsection A of Section 8, Article 5 of this ordinance or both.

If it is determined that the decision of the public body was not an honest exercise of discretion, but rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, and an award of the contract has been made, the relief shall be as set forth in subsection B of Section 4, Article 5 of this ordinance.

C. A bidder contesting a determination that he is not a responsible bidder for a particular contract shall proceed under this section, and may not protest the award or proposed award under Section 4, Article 5 of this ordinance.

D. Nothing contained in this section shall be construed to require a public body, when procuring by competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous.

E. Any determination that a low bidder is not responsible that uses such factors listed in the Invitation to Bid as a basis for its decision shall be presumptively considered an honest exercise of discretion.

Section 4. Protest of award or decision to award.

A. Any bidder or offeror, who desires to protest the award or decision to award a contract shall submit such protest in writing to the public body, or an official designated by the public body, no later than ten days after the award or the announcement of the decision to award, whichever occurs first. Public notice of the award or the announcement of the decision to award shall be given by the public body in the manner prescribed in the terms or conditions of the Invitation to Bid or Request for Proposal. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit the protest in the same manner no later than ten days after posting or publication of the notice of such contract as provided in Section 1, Article 2 of this ordinance. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction that are subject to inspection under Section 32, Article 2 of this ordinance, then the time within which the protest shall be submitted shall expire ten days after those records are available for inspection by such bidder or offeror under said Section 32, or at such later time as provided in this section. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The public body or designated official shall issue a decision in writing within ten days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within ten days of receipt of the written decision by invoking administrative procedures meeting the standards of Section 9, Article 5 of this ordinance, if available, or in the alternative by instituting legal action as provided in Section 8, Article 5 of this ordinance. Nothing in this subsection shall be construed to permit a bidder to challenge the validity of the terms or conditions of the Invitation to Bid or Request for Proposal.

B. If prior to an award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The public body shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided.

Where the award has been made but performance has not begun, the performance of the contract may be enjoined. Where the award has been made and performance has begun, the public body may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

C. Where a public body or an official designated by that public body determines, after a hearing held following reasonable notice to all bidders, that there is probable cause to believe that a decision to award was based on fraud or corruption or on an act in violation of Article 6 of this ordinance, the public body or the designated official may enjoin the award of the contract to a particular bidder.

Section 5. Effect of appeal upon contract.

Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with this ordinance shall not be affected by the fact that a protest or appeal has been filed.

Section 6. Stay of award during protest.

An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest as provided in Section 4, Article 5 of this ordinance, or the filing of a timely legal action as provided in Section 8, Article 5 of this ordinance, no further action to award the contract will be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.

Section 7. Contractual disputes.

A. Contractual claims, whether for money or other relief, shall be submitted in writing no later than 60 days after final payment. However, written notice of the contractor’s intention to file a claim shall be given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

B. Each public body shall include in its contracts a procedure for consideration of contractual claims. Such procedure, which may be contained in the contract or may be specifically incorporated into the contract by reference and made available to the contractor, shall establish a time limit for a final decision in writing by the public body. If the public body has established administrative procedures meeting the standards of Section 9, Article 5 of this ordinance, such procedures shall be contained in the contract or specifically incorporated in the contract by reference and made available to the contractor.

C. If, however, the public body fails to include in its contracts a procedure for consideration of contractual claims, the following procedure shall apply:

1. Contractual claims, whether for money or other relief, shall be submitted in writing no later than 60 days after receipt of final payment; however, written notice of the contractor's intention to file a claim shall be given at the time of the occurrence or at the beginning of the work upon which the claim is based.

2. No written decision denying a claim or addressing issues related to the claim shall be considered a denial of the claim unless the written decision is signed by the public body's chief administrative officer or his designee. The contractor may not institute legal action prior to receipt of the final written decision on the claim unless the public body fails to render a decision within 90 days of submission of the claim. Failure of the public body to render a decision within 90 days shall not result in the contractor being awarded the relief claimed or in any other relief or penalty. The sole remedy for the public body's failure to render a decision within 90 days shall be the contractor's right to institute immediate legal action.

D. A contractor may not invoke administrative procedures meeting the standards of Section 9, Article 5 of this ordinance, if available, or institute legal action as provided in Section 8, Article 5 of this ordinance, prior to receipt of the public body's decision on the claim, unless the public body fails to render such decision within the time specified in the contract or, if no time is specified, then within the time provided by subsection C. A failure of the public body to render a final decision within the time provided in subsection C shall be deemed a final decision denying the claim by the public body.

E. The decision of the public body shall be final and conclusive unless the contractor appeals within six months of the date of the final decision on the claim by the public body by invoking administrative procedures meeting the standards of Section 9, Article 5 of this ordinance, if available, or in the alternative by instituting legal action as provided in Section 8, Article 5 of this ordinance.

Section 8. Legal actions.

A. A bidder or offeror, actual or prospective, who is refused permission or disqualified from participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder or offeror for a particular contract, may bring an action in the Scott County Circuit Court challenging that decision, which shall be reversed only if the petitioner establishes that the decision was not (i) an honest exercise of discretion, but rather was arbitrary or capricious; (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid; or (iii) in the case of denial or prequalification, based upon the criteria for denial of prequalification set forth in subsection B of Section 13, Article 2 of this ordinance. In the event the apparent low bidder, having been previously determined by the public body to be not responsible in accordance with Section 3, Article 1 of this ordinance, is found by the court to be a responsible bidder, the court may direct the public body to award the contract to such bidder in accordance with the requirements of this section and the Invitation to Bid.

B. A bidder denied withdrawal of a bid under Section 20, Article 2, of this ordinance may bring an action in the Scott County Circuit Court challenging that decision, which shall be reversed only if the bidder establishes that the decision of the public body was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid.

C. A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a sole source or emergency basis in the manner provided in Section 1, Article 2 of this ordinance, whose protest of an award or decision to award under Section 4, Article 5 is denied, may bring an action in the Scott County Circuit Court challenging a proposed award or the award of a contract, which shall be reversed only if the petitioner establishes that the proposed award or the award is not (i) an honest exercise of discretion, but rather is arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation or the terms and conditions of the Invitation to Bid or Request for Proposal.

D. If injunctive relief is granted, the court, upon request of the public body, shall require the posting of reasonable security to protect the public body.

E. A contractor may bring an action involving a contract dispute with a public body in the Scott County Circuit Court.

F. A bidder, offeror or contractor need not utilize administrative procedures meeting the standards of Section 9, Article 5 of this ordinance, if available, but if those procedures are invoked by the bidder, offeror or contractor, the procedures shall be exhausted prior to instituting legal action concerning the same procurement transaction unless the public body agrees otherwise.

G. Nothing herein shall be construed to prevent a public body from instituting legal action against a contractor.

Section 9. Administrative appeals procedure.

A. By resolution, the public body may establish an administrative procedure for hearing (i) protests of a decision to award or an award, (ii) appeals from refusals to allow withdrawal of bids, (iii) appeals from disqualifications and determinations of nonresponsibility, (iv) and appeals from decisions on disputes arising during the performance of a contract, or (v) any of these. Such administrative procedure shall provide for a hearing before a disinterested person or panel, the opportunity to present pertinent information and the issuance of a written decision containing findings of fact. The disinterested person or panel shall not be an employee of the governmental entity against whom the claim has been filed. The findings of fact shall be final and conclusive and shall not be set aside unless the same are (a) fraudulent, arbitrary or capricious; (b) so grossly erroneous as to imply bad faith; or (c) in the case of denial of prequalification, the findings were not based upon the criteria for denial of prequalification set forth in Section 13, Article 2 of this Ordinance. No determination on an issue of law shall be final if appropriate legal action is instituted in a timely manner.

B. Any party to the administrative procedure, including the public body, shall be entitled to institute judicial review if such action is brought within thirty days of receipt of the written decision.

Section 10. Alternative dispute resolution.

Public bodies may enter into agreements to submit disputes arising from contracts entered into pursuant to this chapter to arbitration and to utilize mediation and other alternative dispute resolution procedures. Alternative dispute resolution procedures entered into by school boards shall be nonbinding.

ARTICLE 6.

Ethics in Public Contracting.

Section 1. Purpose.

The provisions of this article supplement, but do not supersede, other provisions of law including, but not limited to, the *Virginia State and Local Government Conflict of Interests Act* (§ 2.2-3100 et seq. of the Code of Virginia), the *Virginia Governmental Frauds Act* (§ 18.2-498.1 et seq. of the Code of Virginia), and Articles 2 (§ 18.2-438 et seq.) and 3 (§ 18.2-446 et seq.) of Chapter 10 of Title 18.2 of the Code of Virginia.

The provisions of this article apply notwithstanding the fact that the conduct described may not constitute a violation of the *Virginia State and Local Government Conflict of Interests Act*.

Section 2. Definitions.

As used in this this article.

"Immediate family" means a spouse, children, parents, brothers and sisters, and any other person living in the same household as the employee.

"Official responsibility" means administrative or operating authority, whether intermediate or final, to initiate, approve, disapprove or otherwise affect a procurement transaction, or any claim resulting therefrom.

"*Pecuniary interest arising from the procurement*" means a personal interest in a contract as defined in the *Virginia State and Local Government Conflict of Interests Act* (§ 2.2-3100 et seq. of the Code of Virginia).

"*Procurement transaction"* means all functions that pertain to the obtaining of any goods, services or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

"Public employee" means any person employed by a public body, including elected officials or appointed members of public bodies.

Section 3. Proscribed participation by public employees in procurement transactions.

Except as may be specifically allowed by subdivisions B 1, 2, and 3 of § 2.2-3112 of the Code of Virginia (1950), as amended, no public employee having official responsibility for a procurement transaction shall participate in that transaction on behalf of the public body when the employee knows that:

1. The employee is contemporaneously employed by a bidder, offeror or contractor involved in the procurement transaction;

2. The employee, the employee's partner, or any member of the employee's immediate family holds a position with a bidder, offeror or contractor such as an officer, director, trustee, partner or the like, or is employed in a capacity involving personal and substantial participation in the procurement transaction, or owns or controls an interest of more than five percent;

3. The employee, the employee's partner, or any member of the employee's immediate family has a pecuniary interest arising from the procurement transaction;

4. The employee, the employee's partner, or any member of the employee's immediate family is negotiating, or has an arrangement concerning, prospective employment with a bidder, offeror or contractor.

Section 4. Disclosure of subsequent employment.

No public employee or former public employee having official responsibility for procurement transactions shall accept employment with any bidder, offeror or contractor with whom the employee or former employee dealt in an official capacity concerning procurement transactions for a period of one year from the cessation of employment by the public body unless the employee or former employee provides written notification to the public body, or a public official if designated by the public body, or both, prior to commencement of employment by that bidder, offeror or contractor.

Section 5. Prohibition on solicitation or acceptance of gifts; gifts by bidders, offerors, contractor or subcontractor prohibited.

A. No public employee having official responsibility for a procurement transaction shall solicit, demand, accept, or agree to accept from a bidder, offeror, contractor or subcontractor any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal or minimal value, present or promised, unless consideration of substantially equal or greater value is exchanged. The public body may recover the value of anything conveyed in violation of this subsection.

B. No bidder, offeror, contractor or subcontractor shall confer upon any public employee having official responsibility for a procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged.

Section 6. Kickbacks.

A. No contractor or subcontractor shall demand or receive from any of his suppliers or his subcontractors, as an inducement for the award of a subcontract or order, any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged.

B. No subcontractor or supplier shall make, or offer to make, kickbacks as described in this section.

C. No person shall demand or receive any payment, loan, subscription, advance, deposit of money, services or anything of value in return for an agreement not to compete on a public contract.

D. If a subcontractor or supplier makes a kickback or other prohibited payment as described in this section, the amount thereof shall be conclusively presumed to have been included in the price of the subcontract or order and ultimately borne by the public body and will be recoverable from both the maker and recipient. Recovery from one offending party shall not preclude recovery from other offending parties.

Section 7. Participation in bid preparation; limitation on submitting bid for same procurement.

No person who, for compensation, prepares an invitation to bid or request for proposal for or on behalf of a public body shall (i) submit a bid or proposal for that procurement or any portion thereof or (ii) disclose to any bidder or offeror information concerning the procurement that is not available to the public. However, a public body may permit such person to submit a bid or proposal for that procurement or any portion thereof if the public body determines that the exclusion of the person would limit the number of potential qualified bidders or offerors in a manner contrary to the best interests of the public body.

Section 8. Purchase of building materials, etc., from architect or engineer prohibited.

A. No building materials, supplies or equipment for any building or structure constructed by or for a public body shall be sold by or purchased from any person employed as an independent contractor by the public body to furnish architectural or engineering services, but not construction, for such building or structure or from any partnership, association or corporation in which such architect or engineer has a personal interest as defined in § 2.2-3101 of the Code of Virginia (1950), as amended.

B. No building materials, supplies or equipment for any building or structure constructed by or for a public body shall be sold by or purchased from any person who has provided or is currently providing design services specifying a sole source for such materials, supplies or equipment to be used in the building or structure to the independent contractor employed by the public body to furnish architectural or engineering services in which such person has a personal interest as defined in § 2.2-3101 of the Code of Virginia (1950), as amended.

C. The provisions of subsections A and B herein shall not apply in cases of emergency.

Section 9. Certification of compliance required; penalty for false statements.

A. Public bodies may require public employees having official responsibility for procurement transactions in which they participated to annually submit for such transactions a written certification that they complied with the provisions of this article.

B. Any public employee required to submit a certification as provided in subsection A of this section who knowingly makes a false statement in the certification shall be punished as provided in Section 12, Article 6 of this ordinance.

Section 10. Misrepresentations prohibited.

No public employee having official responsibility for a procurement transaction shall knowingly falsify, conceal, or misrepresent a material fact; knowingly make any false, fictitious or fraudulent statements or representations; or make or use any false writing or document knowing it to contain any false, fictitious or fraudulent statement or entry.

Section 11. Penalty for violation.

Any person convicted of a willful violation of any provision of this article shall be guilty of a Class 1 misdemeanor. Upon conviction, any public officer or employee, in addition to any other fine or penalty provided by law, shall forfeit his/her employment.

ARTICLE 7.

Construction Management and Design-Build Contracting

Section 1. Definitions.

As used in this article, unless the context requires a different meaning:

"Complex project" means a construction project that includes one or more of the following significant components: difficult site location, unique equipment, specialized building systems, multifaceted program, accelerated schedule, historic designation, or intricate phasing or some other aspect that makes the design-bid-build project delivery method not practical.

"Construction management contract" means a contract in which a party is retained by the owner to coordinate and administer contracts for construction services for the benefit of the owner and may also include, if provided in the contract, the furnishing of construction services to the owner.

"Department" means the Department of General Services.

“Design-bid-build” means a project delivery method in which a public body sequentially awards two separate contracts, the first for professional services to design the project and the second utilizing competitive sealed bidding for construction of the project according to the design.

"Design-build contract" means a contract between a public body and another party in which the party contracting with the public body agrees to both design and build the structure, or other item specified in the contract.

“Division” means the Division of Engineering and Buildings of the Department of General Services as established by § 2.2-1129 of the Code of Virginia (1950), as amended.

"Public body" means the same as that term is defined in § 2.2-4301 of the Code of Virginia (1950), as amended.

"State public body" means any authority, board, department, instrumentality, agency, or other unit of state government. "State public body" does not include any covered institution; any county, city, or town; or any local or regional governmental authority.

Section 2. Design-build or construction management contracts for local public bodies authorized.

A. Any local public body may enter into a contract for construction on a fixed price or not-to-exceed price construction management or design-build basis, provided that the local public body (i) receives approval, if required, as provided in subsection (B), (ii) complies with the requirements of this article, and (iii) has by ordinance or resolution implemented procedures consistent with the procedures adopted by the Secretary of Administration for utilizing construction management or design-build contracts.

B. If a local public body is required to obtain approval from its local governing body to enter into a contract for construction using construction management or design-build, then the local governing body shall adopt a resolution or motion on a per project basis in a public forum to that effect prior to issuing a Request for Qualifications.

C. Prior to making a determination as to the use of construction management or design-build for a specific construction project, a local public body shall have in its employ or under contract a licensed architect or engineer with professional competence appropriate to the project who shall (i) advise such public body regarding the use of construction management or design-build for that project and (ii) assist such public body with the preparation of the Request for Proposal and the evaluation of such proposals.

D. A written determination shall be made in advance by the local public body that the design-bid-build project delivery method is not practicable or fiscally advantageous, and such writing shall document the basis for the determination to utilize construction management or design-build, including the determination of the project’s complexity. The determination shall be included in the Request for Qualifications and be maintained in the procurement file.

E. Procedures adopted by a local public body for construction management or design-build pursuant to this article shall include the following requirements:

1. Construction management or design-build may be utilized on projects, provided that (i) the project is a complex project and (ii) the procurement method for the project is approved by the local governing body. The written approval of the governing body shall be maintained in the procurement file;

2. Public notice of the Request for Qualifications is posted on the Department's central electronic procurement website known as eVA, or the local public body's own website, at least 30 days prior to the date set for receipt of qualification proposals;

3. The construction management contract is entered into no later than the completion of the schematic phase of design, unless prohibited by authorization of funding restrictions;

4. Prior construction management or design-build experience or previous experience with the Division shall not be considered as a prerequisite or factor considered for prequalification of a contract. However, in the selection of a contractor, the local public body may consider the experience of each contractor on comparable construction management or design-build projects;

5. Construction management contracts shall require that (i) no more than 10 percent of the construction work, as measured by the cost of the work, be performed by the construction manager with its own forces and (ii) the remaining 90 percent of the construction work, as measured by the cost of the work, be performed by subcontractors of the construction manager, which the construction manager shall procure by publicly advertised, competitive sealed bidding to the maximum extent practicable. The provisions of this subdivision shall not apply to construction management contracts involving infrastructure projects;

6. The procedures allow for a two-step competitive negotiation process;

7. Price is a critical basis for award of the contract; and

8. The procedures allow the local public body to post on the Department's central electronic procurement website known as eVA, or the local public body's own website, when and where the general contractor plans to advertise bid packages for subcontracting opportunities when appropriate.

F. Procedures adopted by a local public body for design-build construction projects shall include a two-step competitive negotiation process consistent with the standards established by the Division of Engineering and Buildings of the Department for state public bodies.

ARTICLE 8.

Reporting Requirements for All Public Bodies

Section 1. Reporting requirements.

All public bodies subject to the provisions of this chapter shall report no later than November 1 of each year to the Director of the Department on all completed capital projects in excess of $2 million, which report shall include at a minimum (i) the procurement method utilized, (ii) the project budget, (iii) the actual project cost, (iv) the expected timeline, (v) the actual completion time, (vi) if such project was a construction management or design-build project, the qualifications that made the project complex, and (vii) any post-project issues.

ARTICLE 9.

Severability and Effective Date

Section 1. Severability.

If any section, article, paragraph, sentence, phrase or word of this ordinance is declared unconstitutional or otherwise invalid by a court of competent jurisdiction, such judgment or decree shall not affect the validity of any other portions of said ordinance.

Section 2. Effective date.

This ordinance shall be effective upon its date of adoption and shall supersede prior Scott County Public Procurement Ordinances and Resolutions which were previously adopted pursuant to the *Virginia Public Procurement Act*.

Voting aye: Darrel W. Jeter, L. Michele Glover, Eddie N. Skeen, Michael K. Brickey, Danny M. Casteel, Christopher S. Maness, and Stefanie C. Addington.

Voting nay: None.

Austin Sacks with Davenport & Company reported that the Board of Supervisors made a motion to go forward with Capital One financing at the September meeting. He went on to say that he is here today for formal approval by resolution setting the parameters of the loan and give county officials authority to sign documents that includes attachments prepared by bond counsel. Mr. Sacks stated that there will be some other approvals needed by the Economic Development Authority and School Board, and he expects to close by the end of this month.

On a motion by Stefanie C. Addington, duly seconded by L. Michele Glover, this Board hereby adopts the following:

RESOLUTION NO: 2025 – 12

RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SCOTT, VIRGINIA (CAPITAL ONE PUBLIC FUNDING, LLC OPTION)

WHEREAS, the Board of Supervisors **(the "Board of Supervisors")** of the County of Scott, Virginia **(the "County")** directed Davenport & Company LLC **(the "Financial Advisor")** to prepare and distribute a Request for Proposals **(the "RFP")** to obtain financing proposals to finance various County capital needs;

WHEREAS, the Financial Advisor reviewed responses to the RFP for the financing of the Projects (as defined below) and along with the County's Bond Counsel, Sands Anderson PC, Richmond, Virginia **("Bond Counsel")** and the County Administrator recommends that the Board of Supervisors accept the proposal dated August 28, 2025 **(the "Proposal")** from Capital One Public Funding, LLC **(the "Lender")** for such financing with an interest rate as set forth in such Proposal and subject to such other terms as set forth therein;

WHEREAS, the Board of Supervisors has requested the Economic Development Authority of Scott County, Virginia **(the "Authority")** to (a) issue, offer and sell its lease revenue bond in an amount of approximately $5,500,000 **(the "Bond")** to finance school capital improvements in the County, including but not limited to, the construction and renovation of two elementary schools located within County (**the "Projects"**), (b) lease the Weber City Elementary

School and/or Yuma Elementary School properties from the Scott County School Board (**the "School Board"**) or such other property of the School Board or the County selected by the Chairman of the Board of Supervisors if it is determined that such property is not available or appropriate to be leased, **(the "Leased Property")** for an approximately twenty-six year term under a Ground Lease (as defined below), and in turn, lease the Leased Property to the County for a term not to exceed the term of the Bond under a Lease Agreement (as defined below) with the Authority and (c) secure the Bond by an assignment of its rights under such Lease Agreement (except the right to receive indemnification, to receive notices and to give consents and to receive its administrative expenses) and the Ground Lease under an Assignment Agreement (as defined below), which is to be acknowledged and consented to by the County and the School Board, all in accordance with a Bond Purchase Agreement (as defined below);

WHEREAS, there have been presented to this meeting drafts of the following documents **(collectively, the "Documents")** in connection with the transactions described above, copies of which shall be filed with the records of the County:

a. a Ground Lease, dated as of October 1, 2025, between the School Board and the Authority conveying to the Authority a leasehold interest in the Leased Property described therein **(the "Ground Lease")**;

b. a Lease Agreement, dated as of October 1, 2025, between the Authority and the County **(the "Lease Agreement")** conveying to the County a leasehold interest in such Leased Property;

c. a Bond Purchase Agreement, dated as of October 1, 2025 among the Authority, the County and the Lender, pursuant to which the Bond is to be issued **(the "Bond Purchase Agreement")**;

d. an Assignment Agreement, dated as of October 1, 2025 between the Authority and the Lender, assigning to the Lender certain of the Authority's rights under the Lease Agreement and the Ground Lease, which is to be acknowledged and consented to by the County and the School Board **(the "Assignment Agreement")**; and

e. a specimen Bond.

BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF SCOTT COUNTY, VIRGINIA:

1. The Proposal and the following plan for financing the Projects is approved. The Authority shall use the proceeds from the issuance of the Bond to provide for the financing of the Projects by the County and to lease the Leased Property from the School Board for a lease term of approximately twenty-six years and to lease the Leased Property to the County for a lease term not less than the term of the Bond at a rent sufficient to pay when due the interest and principal on the Bond. The obligation of the Authority to pay principal and interest on the Bond will be limited to rent payments received from the County under the Lease Agreement. The obligation of the County to pay rent under the Lease Agreement will be subject to the Board of Supervisors of the County making annual appropriations for such purpose. The Board of Supervisors on behalf of the County has adopted this resolution as its moral obligation to the repayment of the Bond and as a statement of its intent to consider the appropriation of funds sufficient to pay rent under the Lease Agreement annually during the term thereof. The Bond will be secured by an Assignment Agreement to the Lender as the holder thereof. If the Board of Supervisors exercises its right not to appropriate money for rent payments, the Lender may terminate the Lease Agreement or otherwise exclude the County from possession of the Leased Property. The issuance of the Bond on the terms set forth in the Bond Purchase Agreement is hereby approved.

2. The Authority is hereby requested to undertake the issuance of the Bond, to loan the proceeds of the Bond for the financing of the Projects and to secure the Bond as set forth in the Documents.

3. The Board of Supervisors, while recognizing that it is not empowered to make any binding commitment to make appropriations beyond the current fiscal year, hereby states its intent to make annual appropriations in future fiscal years in amounts sufficient to make all payments due under the Lease Agreement and hereby recommends that future Boards of Supervisors do

likewise during the term of the Lease Agreement. The Projects are hereby declared to be essential to the efficient operation of the County and the Board of Supervisors anticipates that the Projects will continue to be essential to the operation of the County during the term of the Lease Agreement and the term of the Bond.

4. The Chairman or Vice Chairman of the Board of Supervisors **(the "Chairman**") is authorized and directed to execute or approve the Documents, which shall be in substantially the forms submitted to this meeting, which are approved, with such completions, omissions, insertions and changes not inconsistent with this Resolution as may be approved by the Chairman, his execution to constitute conclusive evidence of his approval of any such completions, omissions, insertions and changes.

5. The Documents shall provide for payments in amounts equivalent to the payments on the Bond, which shall be sold to the Lender with the payments corresponding to the following terms of the Bond: (a) the Bond shall be in the principal amount not to exceed $5,500,000, (b) the Bond shall have a fixed interest rate not to exceed 4.60% per annum, (c) the Bond shall have an amortization of approximately 20 years from its date of issuance, maturing no later than August 1, 2045 and (d) such Bond shall be subject to optional redemption and other terms as set forth therein with such changes, including but not limited to changes in the amounts, dates, payment dates and rates as may be approved by the officer executing them whose signatures shall be conclusive evidence of his approval of the same. Following the issuance of the Bond, the Chairman shall evidence his approval of the final terms and purchase price of the Bond by executing the Bond Purchase Agreement. The actions of the Chairman in approving the terms of the Bond by executing the Bond Purchase Agreement shall be conclusive, and no further action shall be necessary on the part of the Board of Supervisors.

6. The Chairman, Clerk of the Board of Supervisors, County Administrator, the County Treasurer, the County Attorney and all other officers of the County are hereby authorized and directed to work with representatives of the Authority, the Financial Advisor, Bond Counsel, the Lender and its representatives to perform all services and prepare and execute all documentation necessary to issue the Bond, including approving the final forms of the Documents, and to take all such further action as they may consider necessary or desirable in connection with the issuance of the Bond and the financing of the Projects, including execution and delivery of any escrow, security or account control agreements in connection with the proceeds of the Bond.

7. Nothing in this Resolution, the Bond or any documents executed or delivered in relation thereto shall constitute a debt or a pledge of the faith and credit of the Authority or the County, and the Authority shall not be obligated to make any payments under the Bond or the Documents except from payments made by or on behalf of the County under the Lease Agreement pursuant to annual appropriation thereof in accordance with applicable law.

8. The County represents and covenants that it shall not take or omit to take any action the taking or omission of which will cause the Bond to be an "arbitrage bond" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended **(the "Code")** or otherwise cause the interest on the Bond to be includable in gross income for Federal income tax purposes under existing law. Without limiting the generality of the foregoing, the County shall comply with any provision of law that may require the Authority or the County at any time to rebate to the United States any part of the earnings derived from the investment of the gross proceeds from the sale of the Bond.

9. The County hereby designates the Bond and allocates to the Authority in relation to the issuance of the Bond, such designation as a "qualified tax-exempt obligation" for the purpose of Section 265(b)(3) of the Code. The County does not reasonably anticipate (nor do any of its subordinate entities reasonably anticipate) issuing more than $10,000,000 in qualified tax exempt obligations during calendar year 2025 for the benefit of the County and the County (and any of its subordinate entities) will not designate more than $10,000,000 of qualified tax-exempt obligations for the benefit of the County pursuant to Section 265(b)(3) of the Code during such calendar year.

10. The Board of Supervisors on behalf of the County hereby designates to the Bond the "small issuer exception" to the rebate requirements of Section 148(f)(2) and (3) of the Code pursuant to Section 148(f)(D)(vii) of the Code, as the Authority is a subordinate entity of the County under Section 148(f)(4)(D) of the Code and the County is a governmental unit with general taxing powers, no bond which is a part of the Bond will be a private activity bond, 95% or more

of the net proceeds of the Bond are to be used for local governmental activities of the County, and the aggregate face amount of all tax-exempt bonds, excluding private activity bonds to be issued by the County and the Authority during the calendar year 2025 is not reasonably expected to exceed $5,000,000 increased by the lesser of $10,000,000 or so much of the aggregate face amount of the Bond as is attributable to financing the construction of public school facilities within the meaning of Section 148(f)(D)(vii). The Board of Supervisors on behalf of the County hereby allocates to the Authority a portion of its small issuer size limitation in the amount of the Bond for the calendar year 2025 to the Bond for purposes of Section 148(f)(4)(D) of the Code.

11. All costs and expenses in connection with the financing of the Projects and the issuance of the Bond, including the Authority's fees and expenses and expenses of bond counsel, the County Attorney, the County's Financial Advisor, counsel for the Authority, and the Lender shall be paid from the proceeds of the Bond or other legally available funds of the County. If for any reason the Bond is not issued, it is understood that all such expenses shall be paid by the County from its legally available funds and that the Authority shall have no responsibility therefor.

12. All other acts of the Chairman and such other officers of the County as designated by the Chairman that are in conformity with the purposes and intent of this Resolution and in furtherance of the plan of financing, the issuance and sale of the Bond and the financing of the Projects are hereby approved and ratified.

13. This Resolution shall take effect immediately.

PASSED AND ADOPTED this 1st day of October, 2025.

The Resolution set forth above was adopted by a majority of the Board of Supervisors in an open meeting, during a regular meeting of the Board of Supervisors of Scott County, Virginia on October 1, 2025 in which a quorum was present at all times, by the following votes:

AYES:	Darrel W. Jeter L. Michele Glover Michael K. Brickey Christopher S. Maness Stefanie C. Addington
NAYS:	Eddie N. Skeen Danny M. Casteel
ABSENT:	None
ABSTENTIONS:	None

Supervisor Eddie Skeen stated that student enrollment went up by 86 in Scott County, and that included 32 Tennessee students. Tennessee students now represents 13.86 percent of the total enrollment in Scott County. Of the two schools presented, Weber City is 32 percent of Tennessee students and Yuma is 35 percent.

Chairman Maness questioned how Supervisor Skeen arrived at that number.

Supervisor Skeen replied that there is a total of 3,268 students with 453 being Tennessee students.

Chairman Maness questioned how Supervisor Skeen determined the number of Tennessee students.

Supervisor Skeen replied that Mr. Ferguson provided that information.

On a motion by L. Michele Glover, duly seconded by Darrel W. Jeter, this Board hereby approves a Memorandum of Understanding for relocation of the Virginia Cooperative Extension Office, Scott County, Virginia (Said MOU attached to the minutes of this meeting; Minute Book 35 Attachment No: 75).

Voting aye: Darrel W. Jeter, L. Michele Glover, Eddie N. Skeen, Michael K. Brickey, Danny M. Casteel, Christopher S. Maness, and Stefanie C. Addington.

Voting nay: None.

Amy Vicars presented bookkeeping.

On a motion by Darrel W. Jeter, duly seconded by L. Michele Glover, this Board hereby appropriates the following:

$1,102.50 to 1000-31200-401108 Sheriff's Department – Payroll/Other
$84.35 to 1000-31200-402100 FICA

Voting aye: Darrel W. Jeter, L. Michele Glover, Eddie N. Skeen, Michael K. Brickey, Danny M. Casteel, Christopher S. Maness, and Stefanie C. Addington.

Voting nay: None.

Tina Seay presented appointment.

Appointment – Heart of Appalachia Board

Stefanie C. Addington nominated Josh Wilson
Danny M. Casteel nominated Eddie Skeen

Voting for Josh Wilson – Darrel W. Jeter, L. Michele Glover, Stefanie C. Addington, and Michael K. Brickey
Voting for Eddie Skeen – Eddie N. Skeen, Christopher S. Maness, and Danny M. Casteel.

Josh Wilson was appointed to serve a two-year term on the Heart of Appalachia Board.

County Attorney Sally Kegley advised that she did not have anything to discuss other than what she provided in her report to the Board.

Chairman Maness thanked her for getting the public procurement ordinance up-to-date.

County Administrator Josh Wilson presented the claims and related reports (Said reports being attached to the minutes of this meeting; Minute Book 35 Attachment No: 76).

On a motion by L. Michele Glover, duly seconded by Darrel W. Jeter, this Board hereby orders that:

a. General Fund be allowed the sum of $1,105,180.83 for voucher numbers 50025595-50025607, 50025609-50025615, 500235734, 50025736-50025759, 50025761-50025776, 50025778-50025785, 50025787-50025803, 50025806, 50025808-50025814, 50025870-50025895, 50025897-50025900, 50025902-50025903, 50025905-50025907, 50025942-50025950, 50025952-50025966, 50026002-50026003, 50026005-50026056, 50026067-50026129, 50026160-50026189, 50026191-50026198, 50026201-50026205, 50026207-50026211, 50026213-50026214 and wire 631, 632, 633, 634, 635, 636, and Payroll/DD Fund 1000 $611,616.09.

b. Regional Improvements Fund be allowed the sum of $88,000.00 for voucher numbers 50025777, 50025786, 50025896, 50025951, 50026190, 50026199, 50026200, and 50026206.

c. Health Insurance REIMB Fund be allowed the sum of $249,366.00 for wire number 618, 619, 620, 621, 622, 623, and 624

d. Courthouse Security Fund be allowed the sum of $581.05 for voucher number 50026048, and wire 631, 634, 635, 636 and Payroll//DD 1210 $2,423.02.

e. Motor Vehicle Violation Fines Fund be allowed the sum of $39.95 for voucher number 50026004.

f. Weapons Permit Fund be allowed the sum of $328.69 for wire 631, 635, and 636 and Payroll/DD Fund 1230 $708.75.

g. Sheriff's Miscellaneous Fund be allowed the sum of $269.18 for voucher numbers 50025760, 50025788, 50025804, and 50026175.

h. Law Library Fund be allowed the sum of $449.32 for voucher numbers 50025608 and 50025898.

i. CWAO Collection Fund be allowed the sum of $1,139.01 for voucher numbers 50026045 and 50026056 and wire 633, 634, 635, and 636 and Payroll/DD Fund 1310 $1,562.94.

j. CWAO Forfeit Asset Fund be allowed the sum of $53.97 for voucher number 50026174.

k. IT Technology Fund (Clerk) be allowed the sum of $1,246.74 for voucher number 50025596 and 50025904.

l. Wireless Grant 911 be allowed the sum of $892.26 for voucher number 50025901 and wire 631, 635, and 636 and Payroll/DD Fund 1505 $1,462.90.

m. Opioid Settlement Fund be allowed the sum of $15,054.00 for voucher numbers 50026215 and 50026216.

n. American Rescue Plan Act be allowed the sum of $11,740.00 for voucher numbers 50025805 and 50025904.

o. Coal Road Tax Fund be allowed the sum of $71.08 for voucher numbers 50025807 and 50026212.

p. Social Services Fund be allowed the sum of $308,745.04 for voucher numbers 50025616-50025712, 50025908-50025918, 50025967-50025974, 50026057-50026066, 50026154-50026159 and Wire 625, 626, 627, 628, 629, and 630 and Payroll/DD Fund 5000 $117,646.73.

q. CPMT be allowed the sum of $86,750.21 for voucher numbers 50026217-50026235.

Voting aye: Darrel W. Jeter, L. Michele Glover, Eddie N. Skeen, Michael K. Brickey, Danny M. Casteel, Christopher S. Maness, and Stefanie C. Addington.

Voting nay: None.

Assistant County Administrator/Public Works Director Bill Dingus gave a recycling update. He reported that a Memorandum of Understanding was signed with Sullivan County to enable Scott County to take recycling to Sullivan County. He went on to say that S.C.O.T.T. Service helped refurbish the old recycling bins. Mr. Dingus pointed out that there are 14 solid waste sites in the county, and bins will be deployed to seven of those sites initially. The truck drivers are doing all they can to keep up with the junk and metal boxes; therefore, we will ease into recycling. He went on to say that citizens can begin recycling within a week at Duffield, Daniel Boone, Yuma, Nickelsville, Hiltons, Antioch, Ft. Blackmore, and the transfer station for paper and plastic. Mr. Dingus noted that cardboard and aluminum recycling will begin later. Hopefully, Mr. Dingus stated that these bins will reduce the amount in the green boxes. He went on to say that sites are open all the time with 24 hours of labor. Therefore, it will be up to our citizens to recycle the proper way, or recycling will stop if loads are contaminated.

Supervisor Casteel inquired about this being profitable.

Mr. Dingus replied that it would divert waste that is $50 per ton. He went to say that it will be a break even at best. Mr. Dingus pointed out that there will be benefits from this with the green dumpsters being available more often. Mr. Dingus noted that he may be able to compare numbers at some point. He added that recycling is the responsible thing to do.

Supervisor Skeen inquired about green boxes being pulled out of the waste centers in order to add the recycling bins.

Mr. Dingus replied no. Those bins were in the sites before the bottom fell out of recycling. In addition, Mr. Dingus went on to say that he has been working with a regional solid waste group for five years.

Supervisor Skeen inquired about a new trash pickup business in Scott County.

Mr. Dingus replied that they came in and got a hauler permit, they are based out of Washington County, and local people have partnered with them. He went on to say that makes two trash pickup businesses, and he hopes they get every household in the county. That would be a great benefit to everyone.

Supervisor Skeen inquired about the transfer station offering debit card use for tipping fees instead of cash.

Mr. Dingus stated that was discussed briefly, and he noted that a fee would be added if implemented. He went on to say that would be looked into again.

Supervisor Skeen inquired about litter convictions and listing those in the newspaper.

Mr. Dingus replied that those are misdemeanors. We would need to be consistent with that and noted that those convictions involve several months. Mr. Dingus went on to say that the County Administrator could give the Board a quarterly report.

Supervisor Skeen noted the tag readers and letting the public know that they are being watched.

Mr. Dingus reported that that the tag reader is a powerful tool. He pointed out that out-of-county permits issued are in a database. It can run a tag number to reveal how many times the vehicle is in and out of a site. In addition, we can look at the camera and data base if someone is scavenging.

County Administrator Josh Wilson added that it is a very powerful tool. The Information Technology Manager has offered to do a presentation for those on the Solid Waste Committee and then for the Board of Supervisors who are not on that committee. He noted that the make or color of a vehicle can be searched with this tool

Mr. Dingus noted that the issue of being open 130 hours per week with 24 hours budgeted to man the sites. He went on to say that the sites need to be manned when they are open to stop the illegal dumping and scavenging.

County Administrator Josh Wilson noted the work of Tourism Director Brittany Robertson. He went on to say that she put together the Makers and Growers Festival that was a huge success, and she is already planning to make it a bigger event next year. He thanked all the vendors along with the Career and Technical Center and the church for partnering with Tourism. Mr. Wilson reported that the lawn mower was delivered to Keith Memorial Park. The roof on the amphitheater and shed have been replaced at Keith Memorial Park. He recognized Mann Farms for donating one day of their proceeds to Ft. Blackmore Center of Excellence, Hope House, and the Department of Social Services. He asked the Board to appoint an alternate voting delegate for the Virginia Association of Counties annual meeting.

Supervisor L. Michele Glover nominated Stefanie C. Addington to serve as an alternate voting representative at the Virginia Association of Counties annual meeting.

On a motion by Chris Maness, duly seconded by Danny M. Casteel, this Board hereby ceases nominations and, by acclamation, appoints Stefanie C. Addington to serve as an alternate voting representative at the Virginia Association of Counties annual meeting.

Voting aye: Darrel W. Jeter, L. Michele Glover, Eddie N. Skeen, Michael K. Brickey, Danny M. Casteel, Christopher S. Maness, and Stefanie C. Addington.

Voting nay: None.

Supervisor Skeen inquired about the objectives for the Virginia Association of Counties meeting.

County Administrator Josh Wilson stated that it is always good to see what the rest of the counties and state are doing, get ideas, and advocate and showcase Scott County.

Chairman Maness stated that he gave a presentation to the board coming out of that last year, and he would appreciate the two board members that are going this year to collaborate and give a presentation to the rest of the board. Chairman Maness stated that some good contacts were gained last year with housing construction, and that is coming to fruition with things that are going on through the Economic Development Authority. He encouraged Supervisors Addington and Glover to work on housing, tourism, and industry while they are at the conference. Chairman Maness pointed out that there are several vendors and opportunities there.

Mr. Wilson stated that there is going to be some funding for disaster relief and applications have opened for that. LENOWOSICO will be working with us to get applications completed. He went on to say that the Extension Office is taking the lead with crop loss and timber loss.

Supervisor Skeen mentioned that the grant runs through November 6, 2025. In addition, he inquired about the Extension Office relocating.

Mr. Wilson replied that there will be some things that we need to prepare for them at the Soil and Water building; however, they can begin packing as soon as possible. For now, people can still go to the Daniel Boone office to apply for funding. Mr. Wilson highlighted an announcement for Project Intersection. There was a ribbon cutting for the new Wrap facility. He noted that is a Regional Industrial Facility Authority site that will provide revenue to Scott County very soon. Mr. Wilson stated that he has been working with the Economic Development Director on several things, and he will highlight those soon.

BREAK: 10:20 a.m.

RECONVENE: 10:35 a.m.

Park and Golf Course Director Derrick France gave an update (Said update being attached to the minutes of this meeting; Minute Book 35 Attachment No: 77).

Economic Development Director John Kilgore gave an update (Said update being attached to the minutes of this meeting; Minute Book 35 Attachment No: 78).

Commissioner of the Revenue Tammy Tiller and Treasurer Kevin Helms addressed the Board about a software problem that is preventing the completion of the real estate book. Ms. Tiller pointed out that the tax tickets cannot be mailed until this problem is corrected. She noted that a new programmer with the software company is in the process of correcting the problem. Ms. Tiller went on to say that she is behind due to this problem, and that is making the towns and Treasurer behind. Ms. Tiller and Mr. Helms suggested moving the tax due date due to the delay with getting the tax tickets mailed.

Treasurer Kevin Helms pointed out that other counties are having issues as well. The former programmer had been with the software company a long time and was very familiar with the system. Mr. Helms noted that personal property is in the register for the printing company; however, the real estate tickets cannot be printed. By Code, tax bills must be provided 14 days prior to the due date. Mr. Helms stated that he did not want to send a real estate bill to be paid 14 days before the November 20th deadline. In the past, the tax bills were mailed out around the first of October for the November 20th deadline. He went on to say that he and the Commissioner of the Revenue wanted to make the Board aware to see if there is any interest to extend the deadline.

There was discussion among the Board as to extending the due date for taxes.

On a motion by Stefanie C. Addington, duly seconded by Danny M. Casteel, this Board hereby extends the tax due date to December 10, 2025.

Voting aye: Darrel W. Jeter, L. Michele Glover, Eddie N. Skeen, Michael K. Brickey, Danny M. Casteel, Christopher S. Maness, and Stefanie C. Addington.

Voting nay: None.

Treasurer Kevin Helms stated that he would advertise the tax due date extension in the newspaper and on social media.

On a motion by Danny M. Casteel, duly seconded by Stefanie C. Addington, this Board hereby enters into closed session pursuant to Virginia Code Section 2.2-3711 (A)(2) Real Estate being Gate City and 2.2-3711(A)(5) Prospective Industry being Duffield and Weber City.

Voting aye: Darrel W. Jeter, L. Michele Glover, Eddie N. Skeen, Michael K. Brickey, Danny M. Casteel, Christopher S. Maness, and Stefanie C. Addington

Voting nay: None.

On a motion by L. Michele Glover, duly seconded by Stefanie C. Addington, this Board hereby returns to open session.

Voting aye: Darrel W. Jeter, L. Michele Glover, Eddie N. Skeen, Michael K. Brickey, Danny M. Casteel, Christopher S. Maness, and Stefanie C. Addington.

Voting nay: None.

On a motion by Danny M. Casteel, duly seconded by Darrel W. Jeter, this Board hereby gives the following:

CERTIFICATION OF CLOSED MEETING

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

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

NOW, THEREFORE, BE IT RESOLVED that the Scott 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 Scott County Board of Supervisors.

Voting aye: Darrel W. Jeter
L. Michele Glover
Eddie N. Skeen
Michael K. Brickey
Danny M. Casteel
Christopher S. Maness
Stefanie C. Addington.

Voting nay: None.

On a motion by Christopher S. Maness, duly seconded by L. Michele Glover, this Board hereby supports an undisclosed prospect in Duffield, Virginia and authorizes the County Administrator and Chairman to sign any and all documents related to the prospect on behalf of the board.

Voting aye: Darrel W. Jeter, L. Michele Glover, Eddie N. Skeen, Michael K. Brickey, Danny M. Casteel, Christopher S. Maness, and Stefanie C. Addington.

Voting nay: None.

Supervisor Stefanie Addington announced that she has one correction to address. She went on to say that Supervisor Skeen mentioned there are 3,268 students in Scott County with 453 from Tennessee, and that is not 13 percent. It is seven percent instead of 13 percent.

Supervisor Skeen stated that he would look into that.

Supervisor Darrel Jeter inquired about getting Ms. Powers the information that she requested during Citizen Expression Period. In addition, he mentioned the school system assisting with that.

County Attorney Sally Kegley replied that we will do our best with assistance from the School Board office.

Chairman Chris Maness noted that those questions would be better addressed at a School Board meeting.

In addition, Supervisor Michele Glover pointed out that Ms. Powers can go back and review the meeting when Supervisor Stefanie Addington gave a presentation on that information.

There was discussion among the Board as to the percentage of Tennessee students in Scott County. It was determined that 13 percent of the students in Scott County are from Tennessee.

Chairman Chris Maness commended the Economic Development Authority on recent developments, and he appreciates them being a partner to move the county forward.

Supervisor Eddie Skeen reported that five requests for the Virginia Department of Transportation have been addressed. He addressed guardrail improvements between Dungannon and Coeburn being put back on the list. Supervisor Skeen addressed mowing in the Yuma area and school traffic. He pointed out that the turn lane at Yuma School will be expanded to eliminate the congestion. Also, he addressed the LENOWISCO Virginia Coalfield Coalition Committee having placed six new cell towers between Tazewell and Buchannan Counties. Supervisor Skeen stated that he inquired about Scott County. He noted that Duane Miller with LENOWISCO suggested getting a group together coordinated by Josh Wilson and include Scott County Telephone Cooperative. Supervisor Skeen asked Mr. Wilson for any updates on that.

Mr. Wilson replied that there have been discussions about setting a meeting. Luckily, there is a lot of good things coming to the LENOWISCO area. There have been a lot of projects, and we are working on it.

Supervisor Eddie Skeen noted the Public Service Authority pre-construction meeting for Hiltons and Yuma sewer projects, notice to proceed in the next two weeks, and construction to follow.

Supervisor Glover questioned where that project will begin in Hiltons.

Supervisor Skeen replied that he would get that information for her. He also addressed the next project being the Central Scott County project. The Public Service Authority is still working with the railroad to get sewer to the church in Daniel Boone. Supervisor Skeen pointed out that Mr. Wilson invited Sheriff Edds to attend the Board of Supervisors' meeting, they had some discussion, and the Sheriff does not want to request any additional manpower at this time. Supervisor Skeen went on to say that Delegate Kilgore and Senator Pillion were invited to our meeting to discuss rural roads for next year's legislative session, and they have not responded. Supervisor Skeen noted a card of thanks from Meals of Love for funding authorized at the last meeting. Supervisor Skeen stated that he attended a senior citizen meeting where Larry Vicars announced that he would no longer be managing Keith Park as of January 1, 2026. The county will be taking over day-to-day operations at that point. He thanked the seniors for their years of service. Supervisor Skeen went on to say that Keith Memorial Park has 29 bookings through the remainder of 2025 and seven in 2026. The Heritage Table in Nickelsville is open and doing very well. He went on to say that Bush Mills Days is this weekend.

Chairman Maness announced that Allan Sumpter with the Virginia Department of Transportation notified him by email that the Horton Summit Road project will begin on October 20, 2025. The funding for that project is in place and will not be going away.

Supervisor Skeen replied that he would follow-up with the gentlemen who were here about that during Citizen Expression Period.

Chairman Maness stated that he would contact them as well.

Chairman Chris Maness adjourned the meeting until November 5, 2025 at 9:00 a.m.

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CHAIRMAN CLERK