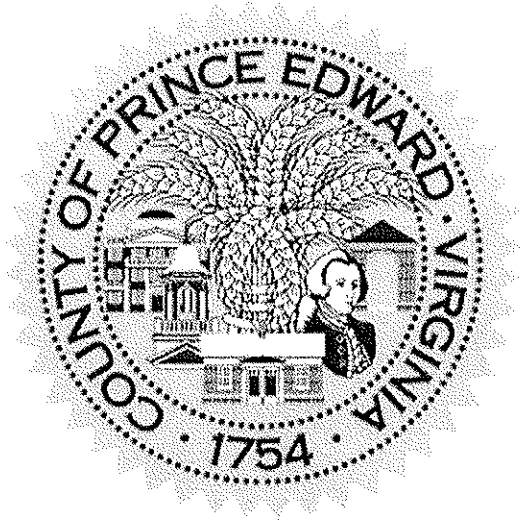


DRAFT: 9/1/2009



INTERIM AGREEMENT

between

THE COUNTY OF PRINCE EDWARD, VIRGINIA

and

CROWDER CONSTRUCTION COMPANY

For

DESIGN AND CONSTRUCTION

of

SANDY RIVER RESERVOIR

WATER TREATMENT AND DISTRIBUTION PROJECT

-

Public-Private Education Facilities and Infrastructure Act of 2002

October , 2009

INTERIM AGREEMENT

THIS INTERIM (“Agreement”) is entered into as of October , 2009 (the “Effective Date”), between **THE COUNTY OF PRINCE EDWARD, VIRGINIA** (“the Owner” or “the County”), and **CROWDER CONSTRUCTION COMPANY** (“Design-Builder”), a North Carolina corporation, licensed to perform general construction contracting in the Commonwealth of Virginia. The County and Design-Builder are referred to individually as a “Party” and collectively as “the Parties”.

1. On July 8, 2008, the County enacted “Guidelines and Procedures” implementing the Public-Private Education Facilities and Infrastructure Act of 2002 (Va. Code §56-575.1, et seq.), establishing procedures for the development of public facilities through public-private partnerships (“Guidelines”).
2. On or about October 17, 2008, the County received an unsolicited proposal (“Proposal” or “Conceptual Phase Proposal”) from Design-Builder pursuant to the Public-Private Education Facilities and Infrastructure Act of 2002 (“PPEA”), Va. Code § 56-575.1, et seq. (as amended) to develop, design and construct the Sandy River Reservoir Water Treatment and Distribution Project. For the purposes of this Interim Agreement, the term “Private Entity” as utilized in the PPEA shall be Crowder Construction Company.
3. Pursuant to the Guidelines, the County subsequently posted notice of, and advertised, its decision to accept Design-Builder’s proposal for conceptual stage consideration.
4. On or about October 21, 2008, the County’s Board of Supervisors, finding that it would be advantageous for the County to proceed with the Project (as defined below) using procedures for competitive negotiation, rather than sealed, competitive bids, given the probable scope, complexity and urgency of the Project, voted to accept the proposal for publication and conceptual stage consideration and caused the County Administrator to advertise for competing proposals.
5. On or about October 21, 2008, the County elected to solicit for consideration, competing proposals for the Project, in accordance with the PPEA and the

Guidelines. No competing proposals were submitted within the time period established for receipt of same.

6. On or about February 10, 2009, the County selected Design-Builder for negotiation of interim and comprehensive agreements for the development, design and construction of the Project, all in accordance with the PPEA and the Guidelines.
7. The Parties have negotiated this Interim Agreement consistent with the PPEA, the Guidelines, other law, Design-Builder's Proposal, and discussions between representatives of the County and Design-Builder, the terms and conditions of which are set out in this Agreement.
8. Having considered Design-Builder's Conceptual Phase Proposal and other information, the County has determined that it is in the best interest of the County and the public purposes of the PPEA, as amended, to authorize Design-Builder to commence preparation of the Detailed Phase Proposal and to perform certain tasks in accordance with the following terms and conditions.

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

1. **Incorporation of Recitals.** The foregoing recitals are true and correct and are incorporated herein by reference.
2. **Definitions.** The following definitions apply to this Agreement. Capitalized Terms not defined herein shall have the meanings as defined in the PPEA, The Guidelines and Design-Builder's Conceptual Phase Proposal.
 - a. "Interim Agreement Price" means the amount that the County will be obligated to pay the Design-Builder as stated at Article 7 of this Agreement.
 - b. "Project" means the design, development and construction of the Sandy River Reservoir Water Treatment and Distribution Project as contemplated by the Proposal. "Project" includes both the entirety of the Project or a part thereof.
 - c. "Proposal" means Design-Builder's Conceptual Phase Proposal dated October 17, 2008.
3. **Design-Builder's Responsibilities.**
 - a. Design-Builder shall perform all services set forth in Exhibit A (the "Services").

- b. Design-Builder shall provide the Services in accordance with the schedule set forth in Attachment 1 to Exhibit A (“Interim Agreement Schedule”).
- c. The County and Design-Builder shall use their best efforts to maintain the Interim Agreement Schedule, which can be modified by mutual written agreement of the Parties as circumstances warrant.
- d. Design-Builder shall procure and maintain insurance in accordance with Exhibit D.

4. **County’s Responsibilities.**

- a. The Owner shall have the responsibilities set forth herein as well as set forth in Exhibit B.
- b. The Owner shall provide a proposed form of Comprehensive Agreement and design-build agreement in sufficient time to avoid delay to the Project.

5. **Interpretation and Intent.**

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

6. **Contract Price.**

If Owner elects to proceed with the Project after acceptance of Design-Builder’s detailed phase proposal, a Lump Sum Contract Price shall be set forth in the Comprehensive Agreement in accordance with the PPEA and the Guidelines.

7. **Interim Agreement Price and Payments.**

- a. **Interim Agreement Price:** Owner shall pay Design-Builder as set forth in Exhibit C.
- b. **Progress Payments**

- i. Design-Builder shall submit to Owner on the fifth (5th) day of each month after execution of this Interim Agreement, Design-Builder's Application for Payment. The Schedule of Values upon which the Applications for Payment will be based shall be in form and level of detail required by Owner and reasonably acceptable to Design-Builder
 - ii. Owner shall make payment within thirty (30) days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with Article 7.b of this Interim Agreement, but in each case less the total of payments previously made.
8. If, at the sole election of the County, the County decides to proceed with the Project and enter a Comprehensive Agreement with Design-Builder, the Parties agree to negotiate in good faith a Comprehensive Agreement including terms and conditions as follow:
 - a. Design-Builder shall self-perform schedule critical portions of the Project.
 - b. Design-Builder shall enter the Comprehensive Agreement in its corporate capacity, utilizing neither a special purpose entity nor joint-venture, partnership or other form of business association with a third-party. The County acknowledges Design-Builder's intent to utilize consultants, sub-consultants and other entities identified in the Proposal. Design-Builder shall not substitute another entity for the services to be performed by Draper Aden Associates as described in the proposal without the County's prior written approval, which approval shall not be unreasonably withheld.
 - c. Differing Site Conditions: Design-Builder shall assume liability for subsurface conditions that differ materially from conditions that would reasonably be anticipated by the Design-Builder, in the exercise of ordinary care and skill in performing and interpreting a geotechnical investigation conducted with the care and skill ordinarily used by members of the geotechnical engineering profession practicing in the Commonwealth of Virginia under similar conditions at the same time.
 - d. Design-Builder acknowledges that the County is prohibited by law from undertaking any indemnity obligations to Design-Builder.
9. **Stop Work and Termination for Cause.**
 - a. **County's Right to Stop Work.** The County may, without cause and for its convenience, order Design-Builder in writing to stop and suspend the Work. Such suspension shall not exceed ninety (90) consecutive days, unless the parties agree to further extend said suspension

b. County's Right to Terminate for Cause.

- i. If Design-Builder persistently fails to (i) provide a sufficient number of design professionals; (ii) perform the Services with promptness and diligence to ensure that the detailed design and permitting are completed in accordance with the Interim Agreement Schedule; **OR IF** Design-Builder (i) becomes insolvent; (ii) makes a general assignment for the benefit of its creditors; (iii) commences or consents to any action seeking reorganization, liquidation or dissolution under any law relating to bankruptcy or relief of debtors; or (iv) commences or consents to any action seeking appointment of a receiver or trustee for itself or its assets, then the County, shall have the rights set forth in Article 9.b.ii below.
- ii. Upon the occurrence of an event set forth in Article 9.b.i above, the County may provide written notice to Design-Builder that it intends to terminate the Interim Agreement unless the problem cited is cured, or reasonably commenced to be cured, within 30 days of Design-Builder's receipt of such notice. If Design-Builder fails to cure, or reasonably commence to cure, such problem, then the County may declare the Agreement terminated for default by providing written notice to Design-Builder of such declaration. In such case, Design-Builder shall not be entitled to receive any payment until the Services are complete. If the unpaid balance due Design-Builder under this subparagraph exceeds all direct costs, losses, and damages sustained by the County in completing the Services (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or other dispute resolution costs), such excess will be paid to Design-Builder. If such costs, losses and damages exceed such unpaid balance, Design-Builder shall pay the difference to the County.

- c. **Design-Builder's Right to Terminate for Cause.** Upon the County's failure to make payments in accordance with the provisions hereof, Design-Builder may, upon thirty (30) days written notice, terminate its obligation to provide further services.

10. **Termination for Convenience.** Upon seven (7) days written notice to Design-Builder, the County may, for its convenience and without cause, elect to terminate this Interim Agreement. In such event, the County shall pay Design-Builder for the following:

- a. All Work executed in connection with the Interim Agreement in accordance with the payment terms of the Interim Agreement;
 - b. The County shall not be obligated to pay Design-Builder for profit on services not performed as a result of such termination.
11. **Standard of Care:** Design-Builder agrees that the standard of care for all professional design services performed under this Interim Agreement shall be the care and skill ordinarily used by members of the design profession in the Commonwealth of Virginia practicing on similar projects at the same time.
12. **Resolution of Disputes, Claims and Other Matters.** Disputes, claims and other matters in question between the Parties under the Interim Agreement shall only be resolved as follows:
 - a. The Parties shall first endeavor to resolve any disputes, claims or other matters in question between them through direct negotiations, and if such direct negotiations fail, by non-binding mediation, with the site of the mediation being the County of Prince Edward, Virginia, which is agreed to be the sole and exclusive venue. Should the dispute, claim, or other matter in question remain unresolved for the shorter of (i) the period following negotiation and mediation, or (ii) more than ninety (90) days after mediation is requested by a Party, either Party may proceed in accordance with subparagraph 12(b) below.
 - b. If the procedures of subparagraph 12(a) have been followed, but, more than ninety (90) days have passed since a Party has requested mediation, and the dispute, claim or matter in question remains unresolved, then either Party may institute a lawsuit in the Circuit Court of the County of Prince Edward, Virginia, and may pursue all available appeals in Virginia state courts, to the extent they have jurisdiction.
 - c. Nothing in paragraphs (a) or (b) shall prevent a Party from seeking temporary injunctive or other temporary equitable relief in the Circuit Court of the County of Prince Edward, Virginia if circumstances so warrant.
 - d. In the event of any dispute, claim, or other matter in question arising, Design-Builder shall continue its performance diligently during its pendency as if no dispute, claim or other matter in question had arisen. During the pendency of any dispute in connection with the payment of moneys, Design-Builder shall be entitled to receive payments for non-disputed items.
13. **Notices.** All notices and demands by any party to any other shall be given in writing and sent by a nationally recognized overnight courier or by United States certified mail, postage prepaid, return receipt requested, and addressed as follows:

To the County: Wade Bartlett, County Administrator
Prince Edward County, Virginia
Post Office Box 382
Farmville, Virginia 23901

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

To Design-Builder: Crowder Construction Company
Attn: Otis A. Crowder, President
6425 Brookshire Blvd.
Charlotte, NC 28216

With copies to: Carlos W. Norris, Vice President
Crowder Construction Company
1111 Burma Drive
Apex, NC 27539

Any party may, upon prior notice to the others, specify a different address for the giving of notice. Notices shall be effective one (1) day after sending if sent by overnight courier or three (3) days after sending if sent by certified mail, return receipt requested.

14. **Successors and Assigns.** Except as expressly otherwise provided, all of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns. This Interim Agreement may not be assigned by Design-Builder without the prior written consent of the County, exercised in the sole discretion of the Board of Supervisors. Design-Builder acknowledges that the County may assign the Interim Agreement to the Virginia's Heartland Water and Sewer Authority, approval for which Design-Builder shall not unreasonably withhold or condition.
15. **Independent Contractor.** It is expressly understood and agreed by the Parties hereto that Design-Builder, in performing its obligations under this Interim Agreement, shall be deemed an independent contractor and not an agent, employee or partner of the County.
16. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but both of such counterparts together shall be deemed to be one and the same instrument. It shall not be necessary in making proof of this Agreement or any counterpart hereof to produce or account for the other counterpart.

17. **Governing Law.** The Interim Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth of Virginia.

18. **Annual Appropriation; Filing With Auditor of Public Accounts.** The financial obligations of the County contained in this Agreement are subject to annual appropriation. Within thirty (30) days after the date of this Agreement, the County shall submit a copy of this Agreement to the Auditor of Public Accounts, to the extent required by Va. Code § 56-575.9(F).

19. **Exhibits::** The following exhibits are attached and made part of the contract
 1. Exhibit A – Design/Builder’s Services
 2. Exhibit B – Owner’ Responsibilities
 3. Exhibit C – Payments to Design/Builder for Services
 4. Exhibit D – Insurance
 5. Exhibit E – Proposal Form
 6. Exhibit F – Dispute Resolution (**Not Used**)
 7. Exhibit G – Allocation of Risks
 8. Exhibit H – Special Provisions (**Not Used**)

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

**COUNTY OF PRINCE EDWARD,
VIRGINIA**

By: _____
Name: _____

ATTEST:

County Clerk

Approved as to form:

_____, County Attorney

CROWDER CONSTRUCTION COMPANY

By: _____
Name: _____

This is **EXHIBIT A**, consisting of 12 pages, referred to in and part of the **Interim Agreement for Design And Construction of Sandy River Reservoir Water Treatment And Distribution Project** dated __, __.

Initials
Owner: _____
Design/Builder: _____

Design/Builder's Services

ARTICLE A1 –SCOPE OF SERVICES

Part 1. Financial Feasibility Services

The Design/Builder shall perform a financial feasibility analysis that will include the development of a financial model to illustrate projected revenues and expenses of the proposed water system.

A. Financial Model

The scope of services is to develop a financial model so that the financial impacts can be examined based on various scenarios described below. The final deliverable will be the summarization of the analysis and modeling produced in the form of a report to be provided to the County. The financial model shall be developed based on the preliminary conceptual cost estimate, and shall be updated based on the option selected by the Owner.

a. Option 1 – Hampden-Sydney College Area Only

The objective of this option is to create a financial model of the “backbone system” that will include the intake and water treatment structures, the main transmission lines and distribution to provide water service to The Manor and to Hampden-Sydney College only. The base model will include the following:

1. Assumptions regarding user rates and fees including fees from new connections.
2. Estimated water consumption, on an annual basis, for a planning horizon of 20 years.
3. Projected revenue from user fees to include residential usage, commercial and business usage, etc.
4. Projected operating expenses.
5. Projected debt service assuming “level” debt service.
6. Projected debt service using debt scenarios structured by Davenport & Company LLC.
7. Projected reserves.
8. Projected impact on real estate tax rates using previously prepared analysis by Davenport & Company, LLC (County’s financial consultant).

The County will review and agree with projections and assumptions as described in Exhibit B of this Agreement.

b. Option 2 – Hampden-Sydney Area & Crewe / Burkeville Area

The objective of this option is to create a financial model of the “backbone system” that will include the intake and water treatment structures, the main transmission lines and distribution to provide water service to The Manor, Hampden-Sydney College, and to the Towns of Crewe and Burkeville. The base model will include the following:

1. Assumptions regarding user rates and fees including fees from new connections.
2. Estimated water consumption, on an annual basis, for a planning horizon of 20 years.
3. Projected revenue from user fees to include residential usage, commercial and business usage, etc.
4. Projected revenue from sale of water to Crewe and Burkeville
5. Projected operating expenses.
6. Projected debt service assuming “level” debt service.
7. Projected debt service using debt scenarios structured by Davenport & Company LLC.
8. Projected reserves.
9. Projected impact on real estate tax rates using previously prepared analysis by Davenport & Company, LLC (County’s financial consultant)

c. Option 3 – Crewe / Burkeville Area Only

The objective of this option is to create a financial model of the “backbone system” that will include the intake and water treatment structures, the main transmission lines and distribution to provide water service to the Towns of Crewe and Burkeville only. The base model will include the following:

1. Projected revenue from sale of water to Crewe and Burkeville
2. Estimated water consumption, on an annual basis, for a planning horizon of 20 years.
3. Projected operating expenses.
4. Projected debt service assuming “level” debt service.
5. Projected debt service using debt scenarios structured by Davenport & Company LLC.
6. Projected reserves.
7. Projected impact on real estate tax rates using previously prepared analysis by Davenport & Company, LLC (County’s financial consultant).

B. Presentations

The Design/Builder shall present the findings of the financial feasibility analysis to the County staff and the County’s Board, at separate meetings, if requested by Prince Edward County. This will include presentations at the conceptual estimate phase and at the final Lump Sum estimate phase.

C. Funding Assistance

The Design/Builder shall prepare up to four (4) funding applications for the County to the following sources: Rural Development; Virginia Resources Authority; Tobacco Commission; and Virginia Department of Health.

D. Assist with Negotiations

The Design/Builder shall assist with negotiations with potential partners to determine feasibility. At this time the potential partners will be the Towns of Crewe and Burkeville and Nottoway County. No more than three presentation/meetings are anticipated.

Part 2. Design and Engineering Services

The Design/Builder shall perform engineering services related to the construction of the Sandy River Reservoir Water Treatment and Distribution System. These services include the following categories of work:

A. Sandy River Water Treatment Plant

The scope of services is to provide a Preliminary Engineering Report (PER) and approximately 30% complete preliminary design for the proposed Sandy River Reservoir Water Treatment Plant. The primary objective of the work performed herein is to refine the concept for treatment based on capacity needs for the service area and develop adequate information in order to prepare a Lump Sum (LUMP SUM) for the comprehensive agreement to include the treatment plant, raw water intake and transmission mains, and finished distribution facilities for the selected option.

a. Report Phase Services

i. Preliminary Engineering Report (PER)

The objective of the PER is to answer outstanding questions regarding system capacity needs, service area, evaluated treatment options, and obtain approval from VDH. The final deliverable is a report to be submitted to VDH and Prince Edward County. The PER will require the following activities to be performed:

1. Review treatability report from Old Dominion University (ODU)
2. Meet with VDH staff to discuss and get buy in on treatability options
3. Perform additional treatability study on the formation potential for disinfection byproducts using ODU.
4. Meet with county staff to discuss capacity needs.
5. Evaluate options for major treatment components
6. Address equipment sizing efficiency issues based on actual and projected future demands for distribution option selected.
7. Develop opinion of probable cost
8. Report to include financial analysis and Environmental Assessment per Rural Development guidelines.
9. Prepare and deliver report

ii. Preliminary Site Plan

In order to access the site for detailed surveying and geotechnical investigations, a site plan will be needed for land disturbing activities. This preliminary site plan would be submitted to the County for review and approval to start temporary construction measures to facilitate items iii and iv below. The final deliverable will be a rough grade site plan to include the below features:

1. Access Roads
2. Clearing Limits
3. Rough Grading Plan based on the concept developed in the PER in item i above.
4. Erosion Control & Stormwater Management features

iii. Preliminary Site Survey

In general, existing available aerial topo will be utilized for preliminary engineering design of the water treatment plant. However, the following additional field survey items will be performed to supplement existing information and to aid with completion of the preliminary design:

1. Research property lines for site
2. Establish five (5) GPS control points total at various points on the site
3. Stake out limits of clearing to be tied to property line and major stormwater management features.
4. Stake out geotechnical boring locations
5. Assist with locations of bore holes drilled by barge using sub-meter hand held GPS

iv. Geotechnical Investigations

The objective of this item is to perform subsurface investigation at the proposed site areas including the reservoir, raw water pumping station, and water treatment plant. The final deliverable will be a geotechnical report suitable for development of a Lump Sum Proposal for this project.

v. TOC Sampling

The objective of this item is to perform additional Total Organic Carbon (TOC) sampling in order to provide a basis of discussion with VDH regarding pretreatment options with the intent to eliminate the need altogether. The final deliverable will be a report summarizing the results of the sampling and laboratory analysis. The testing will include the following:

1. Weekly sampling at the proposed intake site at three (3) different depths for a period of 12 months.
2. Includes equipment, travel expenses, time for two technicians, and laboratory costs.
3. Monthly monitoring for constituents listed in the Virginia Solid Waste Regulations table 5.5. The location of the sampling will be at the intake point.

b. Preliminary Engineering & Design Phase Services

i. Designer Project Management and Administration

Client meetings and workshops included in the lump sum for Engineering Services include the following:

1. Comprehensive Team Kick-Off Meeting in Prince Edward County
2. Interim Progress (Work Session) Meetings – Four (4) Total
3. Monthly Progress Reports
4. Senior Design Staff Quality Reviews

ii. DEQ Discharge Permit

A DEQ discharge permit will be required for dealing with the process wastewater from the water plant. The final deliverable for this item is the submittal of the permit to DEQ. The following will be required for this item:

1. Calculations associated with the permit
2. Meet with DEQ
3. Prepare the permit and submit to DEQ
4. Respond to comments and re-submit if needed

iii. Preliminary Plant, Intake, and Pretreatment Design

The objective of the preliminary design is to refine the concept developed in the PER to approximately 30% complete design adequate enough to develop a Lump Sum Proposal. The final deliverable for this item is a 30% design submittal issued to the Owner for comments prior to Lump Sum Proposal submission. The following will be included in this 30% design effort:

1. Process equipment selections based on calculations and PER recommendations.
2. Preliminary mechanical layouts of buildings
3. Preliminary electrical service and generator sizing including coordination with Dominion Power on incoming power requirements and costs.
4. Architectural programming with the County and preliminary plans based on mechanical space requirements based on developed concept.
5. Preliminary structural design to include sizing, reinforcing requirements, foundation designs, and typical details.
6. Fully developed design for the raw water intake system including the screens, piping, supports, and wetwell for early construction start if desired by the County. If desired, the County will request a change order proposal from the Design Builder for construction of the partial intake facility in the interim agreement period. Design would only include the structures and would not include mechanical, electrical, or above grade building work, etc, which will only be developed to 30% in this interim agreement phase. Full design of associated structures, mechanical, electrical work for the raw water intake system will be included in the comprehensive agreement.

B. Sandy River Water System Infrastructure

The scope of services is to provide a Preliminary Engineering Report (PER) and approximately 15% +/- complete preliminary design for the proposed Sandy River Reservoir Water System. The primary objective of the work performed herein is to refine the concept for the distribution system (including mains, storage tanks, booster stations, etc.) based on capacity needs for the service area and develop adequate information in order to prepare a Lump Sum Proposal for the comprehensive agreement.

c. Report Phase Services

i. Preliminary Engineering Report (PER)

The objective of the PER is to determine alignment, water demands, pipe sizes, water storage, address water quality issues (disinfection), and obtain approval from VDH. The final deliverable is a report to be submitted to VDH and Prince Edward County. The PER will require the following activities to be performed:

1. Meet with VDH staff to discuss scope of work and disinfection concerns
2. Determine alignment options
3. Perform water model of water distribution system
4. Develop opinion of probable cost
5. Prepare and deliver report

d. Preliminary Engineering & Design Phase Services

i. Designer Project Management and Administration

Client meetings and workshops included in the lump sum for Engineering Services include the following:

1. Comprehensive Team Kick-Off Meeting in Prince Edward County
2. Monthly Client Progress Meetings – Eight (8) Total
3. Interim Progress (Work Session) Meetings – Two (2) Total
4. Monthly Progress Reports
5. Senior Design Staff Quality Reviews

ii. Environmental Permitting

Environmental permitting will include the determination of number of location permits required at all stream crossings and impacted wetlands. The final deliverable is the preparation and submission of the permit documents. The following activities are included in this item:

1. Delineation of jurisdictional wetlands and water of the U.S. including the coordination with the Corps of Engineers for confirmation.
2. Review design alternatives with regard to wetland impacts and permit feasibility.

It is anticipated that final permits will be obtained in the future Comprehensive Agreement phase.

iii. Route 15 Water Main

The Route 15 water main is currently designed to 95% of completion. The final deliverable of this item is to finalize design and produce Issue for Construction documents. The following activities are also included in the item:

1. Assist Owner with easement acquisition (most easements have already been prepared and preliminary negotiations have taken place)
2. VDH review and approval
3. Prepare record drawings

iv. Preliminary Water Main Design

1. Water Main to Route 15

Existing available aerial topo will be used to generate a preliminary plan and profile of the proposed alignment. The alignment will be chosen based on property owner / right-of-way research and information provided by the utility companies regarding general locations of utilities. A preliminary easement determination will be made based on those property owners affected by the proposed alignment. The final deliverable for this item is a 15% +/- design

submittal issued to the Owner for comments prior to the Lump Sum Proposal. The following will be included in this 15% +/- design effort:

- a. Parcel maps will be generated by digitizing County tax maps
- b. Geophysical survey of the alignment using electrical resistivity to determine presence of any rock up to 15 feet below grade.
- c. Geotechnical borings to a depth of 20-feet at proposed stream crossings, road crossings, and other critical areas.

2. Water Main to Crewe

Existing available aerial topo will be used to generate a preliminary plan and profile of the proposed alignment. The alignment will be chosen based on property owner / right-of-way research and information provided by the utility companies regarding general locations of utilities. A preliminary easement determination will be made based on those property owners affected by the proposed alignment. The final deliverable for this item is a 15% +/- design submittal issued to the Owner for comments prior to LUMP SUM submission. The following will be included in this 15% +/- design effort:

- a. Parcel maps will be generated by digitizing County tax maps
- b. Geophysical survey of the alignment using electrical resistivity to determine presence of any rock up to 15 feet below grade.
- c. Geotechnical borings to a depth of 20-feet at proposed stream crossings, road crossings, and other critical areas.
- d. Evaluation of the applicability of the size of the existing lines in the Crewe / Burkeville area only. Determination of useful life or condition will not be considered at this stage.

v. Preliminary Booster and Disinfection Station Design

The objective of the preliminary design is to refine the concept developed in the PER to approximately 30% complete design adequate enough to develop a Lump Sum Proposal. The location will be determined in the PER phase. The final deliverable for this item is a 30% design submittal issued to the Owner for comments prior to Lump Sum Proposal. The following will be included in this 30% design effort:

1. Site Plan (including limits of disturbance, erosion and sediment control measures, site access)
2. Conceptual Building Design
3. Plan submittal to DCR and Prince Edward County for Review
4. Geotechnical investigations will include a 25-foot test hole at the site of the proposed building.

vi. Preliminary Water Storage Tank Design

A 500,000-gallon elevated water storage tank will be designed to meet the hydraulic conditions of the new Water Treatment Plant. The objective of the preliminary design is to refine the concept developed in the PER to approximately 30% complete design adequate enough to develop a Lump Sum Proposal. The final deliverable for this item is a 30% design submittal issued to the Owner for

comments prior to LUMP SUM submission. The following will be included in this 30% design effort:

1. Site Plan (including limits of disturbance, erosion and sediment control measures, site access, and site layout)
2. Site topographical survey to provide plan with 1-foot contours.
3. Plan submittal to DCR and Prince Edward County for Review
4. Geotechnical investigations will include a 25-foot test hole at the site of the proposed tank.

Part 3. Preconstruction Services

The Design/Builder shall perform preconstruction services related to the construction of the Sandy River Reservoir Water Treatment and Distribution System. These services include the following categories of work:

A. Estimating

a. Presentation Level Estimate

The Design/Builder will establish a presentation level estimate (+/-30%) for Options 1 through 3 as defined in Part 1.A of this Exhibit. The estimate will be presented in a mutually agreeable matrix broken down by work area (e.g. water treatment plant, infrastructure/distribution, etc.) and will include any optional treatment process that may be considered. This estimate may contain a range of high and low costs associated with the items broken down in the matrix. The intent of the presentation level estimate is to allow the Owner to begin development of partnerships with other entities as defined in the options referenced above.

b. Preliminary Conceptual Estimate (90% PER)

The Design/Builder will establish an estimate (+/- 20%) based on the 90% complete PER and available level of preliminary design. The intent of this estimate is to provide the Owner a more refined estimate in order to solidify any agreements with potential partners as defined in the options presented.

c. Final Conceptual Estimate (100% PER)

Upon completion of the PER, the Design/Builder will refine its preliminary conceptual estimate (revised to +/- 15%) based on any changes to the PER from the 90% submission.

d. Lump Sum Proposal (30% WTP / 15% Infrastructure)

The Design/Builder will provide a detailed estimate and Lump Sum Proposal for the completion of the work, in a mutually agreed upon format and per that described in Exhibit E. At this level, the Design/Builder shall guarantee a Lump Sum price and assume the remaining risk for the cost of the Project as it is defined in the Comprehensive Agreement. The Design/Builder will indicate any time sensitive pricing items in the proposal.

B. Scheduling

a. Design Schedule

The Design/Builder shall produce, monitor, and update a design stage schedule in Primavera (P3).

b. Preliminary Construction Schedule

The Design/Builder shall produce a preliminary Construction schedule as part of the Lump Sum Proposal as outlined in 2.A.b above.

C. Value Engineering

a. Bi-Weekly Reviews

Design/Builder shall conduct bi-weekly reviews of the design progress, which shall include evaluating constructability, process equipment and material alternatives and other value-engineering considerations to reduce Project costs and/or improve the Project. The Owner will have the opportunity to participate in value engineering discussions. The Lump Sum Proposal will be developed based on exhibits sufficient to adequately clarify major construction components, facilities, materials, and equipment to the Owner and will be included in the Comprehensive Agreement. If a Comprehensive Agreement is executed after preparation of the Lump Sum Proposal, any value engineering will be done only with written approval from the Owner.

D. Construction Planning

a. Coordination

Design/Builder shall provide planning and coordination for subsequent Construction activities as it relates to the preliminary design packages, including, potential subcontractor prequalification, vendor/supplier source listings, etc.

Part 4. Services Not Included (Currently)

The following activities are currently not included in the interim agreement but may be incorporated by written amendment as the Project advances:

- A. Construction Management
- B. Pilot Studies (It is the intent of the Design/Build team to negotiate with Virginia Department of Health to avoid installation of a pre-treatment facility, which would be a significant project expense. Based on preliminary water quality data, we have a reasonable degree of confidence that we will be successful with this negotiation. However, if pre-treatment cannot be avoided, we will submit a proposal for an amendment to perform a pilot study and associated preliminary design as needed to prepare an accurate Lump Sum Proposal).
- C. Final Design (except for that specifically included in this Scope of Services)
- D. Design revisions, financial model modifications and participation in meetings and/or negotiations to accommodate changes to serve or not serve potential wholesale partners after the 120 day decision period to be coordinated by the Owner.
- E. Submittal of designs to review agencies
- F. Construction of the Project or portions thereof
- G. Basic Engineering Services during Construction
- H. Quality Control Testing and Inspections
- I. Record Drawings
- J. Operations & Maintenance Manuals or Training

**Attachment 1 to Exhibit A
Anticipated Progress Schedule**

The following is a summary of the anticipated progress schedule broken down by the activities set forth in Exhibit A above:

Part 1. Financial Feasibility Services

TASK	START	FINISH
Financial Modeling	Completion of Preliminary Concept Level Estimate	Two Weeks from Preliminary Concept Estimate
Report	Financial Model Completion	Two Weeks from Financial Model
Presentations to PEC Staff & Board	Monthly Updates As Needed	
Funding Assistance	Completion of Final Concept Level Estimate	Lump Sum Proposal Submittal

Part 2. Engineering Services

A. Sandy River Water Treatment Plant

TASK	START	FINISH
Preliminary Engineering Report (PER)	NTP	90% 6 Months from NTP (Allow 4 months for wholesale partners to make decision to participate) Finalize and submit to VDH within 30 days of Final options chosen
TOC Sampling	NTP	12 Months from NTP
Site Plan	2 Months from NTP	4 Months from NTP (Submittal to County for Approval)
Survey Research & Control	NTP	2 Months from NTP
Survey Stake-out	Site Plan Approval	2 Weeks from Site Plan Approval
Geotechnical Exploration & Reporting	Survey Stake-out	2 Months from Survey Stake-out
DEQ Discharge Permit	2 Months from NTP	6 Months from NTP
Preliminary Design	NTP	12 Months from NTP
Design of Intake Wetwell & Underwater Structures	NTP	6 Months from NTP & 2 Months from Completion of Geotechnical Report

B. Sandy River Water System Infrastructure

TASK	START	FINISH
Preliminary Engineering Report (PER)	NTP	90% 6 Months from NTP (Allow 4 months for wholesale partners to make decision to participate) Finalize and submit to VDH within 30 days of Final options chosen
Hampden-Sydney Water Main	NTP	3 Months from NTP, IFC Set

		Issued
Preliminary Water Main Design	NTP	4 Months from Final option
Booster Station Site Plan	Final option chosen	4 Months from Final Option
Water Storage Tank Design	Final option chosen	6 Months from Final Option
Environmental Permit Preparation	Final option chosen	6 Months from Final Option

Part 3. Preconstruction Services

TASK	START	FINISH
Presentation Level Estimate	NTP	2 Months
Preliminary Concept Estimate	Completion of Presentation Level Estimate	6 Months from NTP
Final Concept Estimate	Final Options Chosen	1 Month
Lump Sum Proposal	Owner's Comments Received*	2 Months from receipt of comments
Design Schedule	NTP	1 Month from NTP
Preliminary Construction Schedule	Owner's Comments Received*	2 Months from receipt of comments
Value Engineering	NTP	Lump Sum Proposal Submitted
Construction Planning	NTP	Lump Sum Proposal Submitted

*See Exhibit E, E1.01, A for further description

This is **EXHIBIT B**, consisting of 2 pages, referred to in and part of the **Interim Agreement for Design And Construction of Sandy River Reservoir Water Treatment And Distribution Project** dated __, __.

Initials
Owner: _____
Design/Builder: _____

Owner's Responsibilities

ARTICLE B1 – FURTHER RESPONSIBILITIES OF OWNER

B1.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall:

A. Prepare and provide to Design/Builder the Comprehensive Agreement, General Conditions, Supplementary Conditions, and Bond Forms which will be required in connection with the Comprehensive Agreement.

B. As appropriate, provide Design/Builder with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations.

C. Furnish copies of all design and Construction standards which Owner shall require to be included in the Contract Documents.

D. Furnish to Design/Builder any other available existing information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site.

E. Following Design/Builder's assessment of initially-available Project information and data, upon Design/Builder's request, furnish or otherwise make available such additional existing Project-related information and data as is reasonably required to enable Design/Builder to complete its Engineering Services. Such additional information or data may include the following:

1. Zoning, deed, and other land use restrictions;

2. Available existing data prepared by or services of others, including without limitation explorations and tests of subsurface conditions at or contiguous to the Site, Drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site, or hydrographic surveys, with appropriate professional interpretation thereof;

3. Available existing environmental assessments, audits, investigations, and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas; and

F. Give prompt written notice to Design/Builder whenever Owner observes or otherwise becomes aware of any development that affects the scope or time of performance or furnishing of Design/Builder's services, or any defect or nonconformance in Design/Builder's services.

G. Furnish, as appropriate, other services or provide written authorization to Design/Builder to provide required –Services Not Included (Currently) as set forth in Exhibit A, Part 4.

H. Arrange for safe access to and make all provisions for Design/Builder and Design/Builder's sub-consultants to enter upon public and private property as may reasonably be required for Design/Builder to perform services under the Agreement. This does not relieve the Design/Builder of its responsibility for safety with its own activities.

I. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Design/Builder (including obtaining advice of an attorney, insurance counselor, and other consultants as Owner deems appropriate with respect to such examination) and render in writing decisions pertaining thereto within a mutually agreeable time after receipt of documents.

J. Obtain reviews, approvals, and permits from all governmental authorities having jurisdiction over the Project or from such others as may be necessary for completion of each Phase of the services in this Agreement.

K. Provide, as required for the Project:

1. Accounting, bond, financial advisory, and insurance counseling services;
2. Legal services with regard to the Project as needed by Owner, or as Design/Builder reasonably requests.

L. Advise Design/Builder of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, Project peer review, value engineering, and constructability review.

M. Additional Owner responsibilities:

1. Costs of all permits to be paid directly by the Owner.
2. Coordinate meetings with Crewe and Burkeville or any other potential wholesale customers as needed.
3. Owner will pay the cost for any utility connections fees to the new plant facilities (e.g. Dominion Power, Verizon, etc.)
4. Owner will provide and pay for all third party reviews of the preliminary design and engineering services as needed.
5. Costs associated with railroad permits/flagmen will be paid by the Owner.
6. Owner will review and agree with assumptions and projections for rates, fees, number of users, projected revenue, and cost sharing information to be used in the financial model prior to completion.
7. Owner shall provide preliminary financial model based on Preliminary Concept Estimate to potential wholesale partners. Owner shall allow for 120 days for potential wholesale partners to decide if they want to participate in the Project. Owner shall notify Design/Builder of the option selected based on the responses or lack of responses from the potential wholesale partners at the end of the 120 days. Design revisions after that period will be considered an Additional Service.
8. Owner will pay all legal and purchase costs associated with the acquisition of land or easements as required for the Project.

This is **EXHIBIT C**, consisting of 2 pages, referred to in and part of the **Interim Agreement for Design And Construction of Sandy River Reservoir Water Treatment And Distribution Project** dated __, __.

Initials
Owner: _____
Design/Builder: _____

Payments to Design/Builder for Services

Article 7 of the Agreement is supplemented as follows:

ARTICLE 7 – Interim Agreement Price and Payments

For Basic Services Having a Determined Scope

A. Owner shall pay Design/Builder for the Scope of Services set forth in Exhibit A, including all related expenses, as follows:

1. A Lump Sum of \$1,979,000 for the Scope of Services in Exhibit A allocated as follows:

- a. Financial Feasibility Services \$29,000
- b. Engineering Services \$1,599,000
- c. Preconstruction Services \$351,000

2. The Lump Sum includes compensation for Design/Builder's services and services of Design/Builder's Subcontractors, if any. Appropriate factors have been incorporated into the Lump Sum to account for labor, overhead, profit, and Reimbursable Expenses.

3. The portion of the Lump Sum billed will be based upon Design/Builder's estimate of the proportion of the total services actually completed during the billing period to the Lump Sum for the phase.

This is **EXHIBIT D**, consisting of 2 pages, referred to in and part of the **Interim Agreement for Design And Construction of Sandy River Reservoir Water Treatment And Distribution Project** dated __, __.

Initials
 Owner: _____
 Design/Builder: _____

Insurance

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

A. By Design/Builder:

1. Workers' Compensation: Statutory

2. Employer's Liability –

Each Accident:	<u>\$500,000</u>
Disease, Policy Limit:	<u>\$500,000</u>
Disease, Each Employee:	<u>\$500,000</u>

3. General Liability –

General Aggregate:	<u>\$2,000,000</u>
Each Occurrence (Bodily Injury and Property Damage):	<u>\$1,000,000</u>

4. Excess Umbrella Liability –

Each Occurrence:	<u>\$5,000,000</u>
General Aggregate:	<u>\$5,000,000</u>

5. Automobile Liability –

a. ~~Bodily Injury:~~

Each Person	\$
Each Accident	\$
Property Damage	
Each Accident	\$

~~or~~

a. Combined Single Limit
(Bodily Injury and Property Damage):

Each Accident	<u>\$1,000,000</u>
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6. Professional Liability Insurance (by Design Professional)

Per Claim:	\$2,000,000
Aggregate:	\$3,000,000

7. ~~Other (specify):~~ _____ \$

B. By Owner:

- | | | |
|----|---|---------------------|
| 1. | General Liability: | |
| | General Aggregate: | <u>\$2,000,000</u> |
| | Each Occurrence (Bodily Injury and
Property Damage): | <u>\$1,000,000</u> |
| 2. | Property Damage Liability Insurance: | _____ \$ |
| 3. | Property Insurance: | <u>\$1,000,000</u> |
| 4. | Other (specify): | _____ \$ |

5. Additional Insureds. The following individuals or entities are to be listed on Owner's policies of insurance as additional insureds as provided in paragraph 6.05.B of the Agreement:

Crowder Construction Company, its officers, directors, employees and agents

Draper Aden Associates, its officers, directors, employees and agents

This is **EXHIBIT E**, consisting of 1 pages, referred to in and part of the **Interim Agreement for Design And Construction of Sandy River Reservoir Water Treatment And Distribution Project** dated ____, ____.

Initials
Owner: _____
Design/Builder: _____

Proposal Form

ARTICLE E1 – LUMP SUM PROPOSAL

E1.01 General

- A. When the design and engineering is approximately 30% complete, the Design/Builder shall issue a review set to the Owner for comment. The Owner shall within forty-five (45) calendar days, submit a written response with comments requesting changes to the Conceptual Drawings or Specifications issued. The Design/Builder shall incorporate those changes into a final document in which the Lump Sum Proposal is based upon.
- B. The Design/Builder shall propose a Lump Sum which shall be the sum of the remainder of the design fee, the cost of the Design Professional's services during Construction, the cost of quality control testing services that fall outside the Owner's responsibility, Construction Project management, the cost of the Work and the Design/Builder's fee including overhead and profit.
- C. As the design and engineering is not finished at the time the Lump Sum Proposal is prepared, the Design/Builder shall provide in the Lump Sum for costs associated with the further development of the Drawings and Specifications by the Design Professional that is consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as Owner requested changes in scope, systems, kinds and quality of materials, finishes or equipment all of which, if required, shall be incorporated by Change Order.
- D. The Design/Builder shall include with the Lump Sum Proposal a written statement of its basis, which shall include:
 - a. A list of Drawings and Specifications and the conditions of the contract, which were used in preparation of the Lump Sum Proposal.
 - b. A list of the clarifications and assumptions made by the Design/Builder in the preparation of the Lump Sum proposal to supplement the information contained in the Drawings and Specifications.
 - c. The proposed Lump Sum as described in item B above.
 - d. A detailed schedule of Construction outlining the remaining Design Professional's tasks, permitting allowances, construction activities, start-up and testing, training of the Owner's operational staff, and facilities acceptance and commissioning. The schedule shall identify the Notice to Proceed date in which the Lump Sum Proposal was based upon.
- E. The Design/Builder shall meet with the Owner to review the Lump Sum Proposal and the written statement of its basis. In the event that the Owner discovers any inconsistencies or inaccuracies in the information presented, the Owner shall promptly notify the Design/Builder, who shall make appropriate adjustments to the Lump Sum Proposal, its basis, or both.

This is **EXHIBIT F**, consisting of 1 pages,
referred to in and part of the **Interim Agreement
for Design And Construction of Sandy River
Reservoir Water Treatment And Distribution
Project** dated ____, ____.

Initials

Owner: _____

Design/Builder: _____

Dispute Resolution

Intentionally Omitted

This is **EXHIBIT G**, consisting of 1 pages, referred to in and part of the **Interim Agreement for Design And Construction of Sandy River Reservoir Water Treatment And Distribution Project** dated , .

Initials
Owner: _____
Design/Builder: _____

Allocation of Risks

The limitations on Design/Builder's liability and on damages set forth in this Exhibit G shall have no force and effect if Design/Builder and Owner enter into a contract for the remainder of the Work; in such case the terms of the subsequent contract shall establish the contractual limitations, if any, on Design/Builder's liability and on damages.

Limitation of Design/Builder's Liability

1. *[Design/Builder's Liability Limited to Amount of Design/Builder's Compensation]*

To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Design/Builder and Design/Builder's officers, directors, partners, employees, agents, and Subcontractors, and any of them, to Owner and anyone claiming by, through, or under Owner, for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the services included in this Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, or breach of contract or warranty (express or implied) of Design/Builder or Design/Builder's officers, directors, partners, employees, agents, or Subcontractors, or any of them, shall not exceed the total compensation received by Design/Builder under this Agreement.

2. *[Exclusion of Special, Incidental, Indirect and Consequential Damages]*

To the fullest extent permitted by law, and notwithstanding any other provision in the Agreement, Neither Owner nor Design/Builder and Design/Builder's officers, directors, partners, employees, agents, and Subcontractors shall be liable to one another or anyone claiming by, through, or under any of them, for any special, incidental, indirect, or consequential damages whatsoever arising out of, resulting from or in any way related to services included in this Agreement from any cause or causes, including but not limited to any such damages caused by the negligence, professional errors or omissions, strict liability, breach of contract or breach of warranty (express or implied) of Design/Builder or Design/Builder's officers, directors, partners, employees, agents, or Subcontractors, or any of them.

This is **EXHIBIT H**, consisting of 1 pages, referred to in and part of the **Interim Agreement for Design And Construction of Sandy River Reservoir Water Treatment And Distribution Project** dated ____, ____.

Initials

Owner: _____

Design/Builder: _____

Special Provisions

Intentionally Omitted