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You may not sublicense, assign, or transfer this license except as expressly provided in this Agreement. Any attempt otherwise to sublicense, assign, or transfer any of the rights, duties, or obligations hereunder is void.

This Agreement shall be governed by the laws of the State of Virginia. Should you have any questions concerning this Agreement, you may contact EJCDC by writing to:

Arthur Schwartz, Esq.
General Counsel
National Society of Professional Engineers
1420 King Street
Alexandria, VA 22314

Phone: (703) 684-2845
Fax: (703) 836-4875
e-mail: aschwartz@nspe.org

You acknowledge that you have read this agreement, understand it and agree to be bound by its terms and conditions. You further agree that it is the complete and exclusive statement of the agreement between us which supersedes any proposal or prior agreement, oral or written, and any other communications between us relating to the subject matter of this agreement.

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the Controlling Law.

STANDARD FORM OF AGREEMENT
BETWEEN
OWNER AND DESIGN/BUILDER
FOR
PRELIMINARY SERVICES

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly By



PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
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AMERICAN SOCIETY OF CIVIL ENGINEERS

This Agreement has been prepared for use in anticipation that the Standard General Conditions of the Contract between Owner and Design/Builder (No. D-700, 2002 Edition) and one of the two Agreements Between Owner and Design/Builder (Nos. D-520 and D-525, 2002 Editions) of the Engineers Joint Contract Documents Committee will be used for final design and construction of the work. Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are also contained in the Guide to Use of EJCDC Design/Build Documents (No. D-001, 2002 Edition).

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STANDARD FORM OF AGREEMENT
BETWEEN
OWNER AND DESIGN/BUILDER
FOR
PRELIMINARY SERVICES

THIS IS AN AGREEMENT between County of Prince Edward, Virginia (“Owner”)
and Crowder Construction Company (“Design/Builder”)

Owner intends to construct the Sandy River Reservoir Water Treatment and Distribution System in
Prince Edward County, Virginia.

which is ~~(all)~~(part of) _____
_____ (“Project”).

RECITALS:

R-1 On April 6, 2002, the Governor of the Commonwealth signed into law, effective July 1, 2002, the Public-Private Education Facilities and Infrastructure Act of 2002, Sections 56-575.1 through 56-575.17 of the Code of Virginia, as amended (the “PPEA”).

R-2 In enacting the PPEA, the General Assembly found and declared, among other things, that:

- (a) there is a public need for timely acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, operation, implementation, or installation of public infrastructure and government facilities within the Commonwealth that serve a public need and purpose;**
- (b) such public need may not be wholly satisfied by existing methods of procurement in which qualifying projects are acquired, designed, constructed, improved, renovated, expanded, equipped, maintained, operated, implemented, or installed;**
- (c) there are inadequate resources to develop new public infrastructure and government facilities for the benefit of citizens of the Commonwealth, and there is demonstrated evidence that public-private partnerships can meet these needs by improving the schedule for delivery, lowering the cost, and providing other benefits to the public;**
- (d) financial incentives exist under state and federal tax provisions that promote public entities to enter into partnerships with private entities to develop qualifying projects; and**
- (e) authorizing private entities to acquire, design, construct, improve, renovate, expand, equip, maintain, operate, implement, or install one or more qualifying projects may result in the availability of such projects to the public in a more timely or less costly fashion, thereby serving the public safety, benefit, and welfare.**

R-3 The PPEA grants the Owner the authority to allow private entities to acquire, design, construct, improve, renovate, expand, equip and/or operate qualifying projects if the Owner determines there is a need for the

projects and private involvement would provide the projects to the public in a more timely and cost-effective fashion.

R-4 The PPEA allows for both solicited and unsolicited project proposals.

R-5 On July 8, 2008, the Owner adopted procedural guidelines (the "PPEA Guidelines & Procedures") for the selection of solicited and unsolicited project proposals for negotiation under the PPEA.

R-6 Pursuant to the PPEA, on October 17, 2008, the Design/Builder submitted an unsolicited proposal for the development, design, and construction of the Sandy River Reservoir Water Treatment and Distribution Project.

R-7 Pursuant to Section 2.2-3705.6(11)(b) of the Code of Virginia, 1950, as amended, Owner and Design/Builder reached an agreement on October 20, 2008 to protect certain portions of the Design/Builder's unsolicited proposal from public disclosure under the Virginia Freedom of Information Act.

R-8 On October 20, 2008 the Owner received and accepted the Design/Builder's unsolicited proposal and elected to solicit for consideration, competing proposals due to the Owner no later than 4:00 P.M., local prevailing time, on December 15, 2008.

R-9 On February 10, 2009, the Owner authorized both a legal and technical review of the Design/Builder's unsolicited proposal.

R-10 On February 10, 2009, the Owner selected Crowder Construction Company for negotiation of interim and comprehensive agreements under the PPEA for development, design, and construction of the Sandy River Reservoir Water Treatment and Distribution Project.

R-11 Owner and Crowder Construction Company, as Design/Builder, wish to enter this Agreement to serve as the interim agreement under the PPEA, to allow Design/Builder to provide and be compensated for certain preliminary services necessary to the Project during the negotiation of the comprehensive agreement and documents related thereto.

Owner and Design/Builder in consideration of their mutual covenants as set forth herein agree as follows:

ARTICLE 1 – GENERAL

1.01 Scope

A. This Agreement shall constitute an interim agreement, as provided for by the PPEA, Virginia Code §56-575.9:1, between the parties to allow the Design/Builder to perform and be compensated for certain specified preliminary services as the parties proceed to negotiate a comprehensive agreement and design/build contract for full completion of the Project; however, execution of this Agreement and the performance of any services hereunder shall not require or bind the Owner to retain the Design/Builder for any additional Work beyond that specified by this Agreement, on this Project or any other, through a comprehensive agreement, subsequent interim agreement or any other contract. The Owner shall be considered the responsible public entity and the Design/Builder shall be considered the private entity, as those terms are defined and used in the PPEA.

B. Under this Agreement Design/Builder shall provide the services set forth in Exhibit A which generally consists of design documents and supporting engineering activities in order to facilitate the preparation of a Guaranteed Maximum Price (“GMP”) proposal for Construction of the Project.

C. No permanent Construction ~~at the Site~~ is included in Design/Builder's services under this Agreement.

D. In addition to and in conjunction with the services set forth in Exhibit A, it is the intent of the Owner and Design/Builder to negotiate the terms of a mutually satisfactory Comprehensive Agreement during the term of this Agreement. To that end, the Owner and Design/Builder set forth the following approximate schedule for negotiation of the Comprehensive Agreement:

1. Owner shall provide its proposed form of Comprehensive Agreement and construction contract documents to Design/Builder within one-hundred twenty (120) days after the Effective Date of this Agreement.

2. Design/Builder shall submit its GMP proposal no later than forty-five (45) days after completion of services set forth in Exhibit A.

3. The GMP proposal may be negotiated, but it shall be finally accepted or rejected among the parties within sixty (60) days after its initial submittal.

4. If a GMP is agreed upon, the final Comprehensive Agreement shall be agreed upon and presented to Owner's Board of Commissioners for approval within sixty (60) days after the parties reach agreement on the GMP.

ARTICLE 2 – OWNER'S RESPONSIBILITIES

2.01 General

A. Owner shall have the responsibilities set forth herein and in Exhibit B.

ARTICLE 3 – TIMES FOR RENDERING SERVICES

3.01 Commencement

A. Design/Builder shall begin rendering services as of the Effective Date of the Agreement.

3.02 Time for Completion

A. Specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided in Attachment 1 to Exhibit A. If such periods of time or dates are changed through no fault of Design/Builder, the rates and amounts of compensation provided for herein shall be subject to equitable adjustment.

B. If Owner authorizes changes in the scope, extent, or character of the Project, the time of performance of Design/Builder's services shall be adjusted equitably.

C. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the services of Design/Builder. Owner shall pay

Design/Builder additional compensation for costs resulting from unreasonable delay caused by Owner.

D. If Design/Builder fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled to the recovery of damages for any loss resulting from such failure.

ARTICLE 4—PAYMENTS TO DESIGN/BUILDER

4.01 Payments

A. Owner shall pay Design/Builder for services performed or furnished under Exhibit A on the basis set forth in Exhibit C.

4.02 Other Provisions Concerning Payments

A. *Preparation of Invoices.* Design/Builder shall prepare its invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Design/Builder may submit no more than one invoice to Owner per month.

B. *Payment of Invoices.* Invoices are due and payable within 30 days of receipt. Payments will be credited first to any interest due to Design/Builder and then to principal.

C. *Late Payment.* If Owner fails to make any payment due Design/Builder for services and expenses within 30 days after receipt of Design/Builder's invoice, then:

1. the amounts due Design/Builder will be increased at the rate of 1.0 percent per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and

2. Design/Builder may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid Design/Builder in full all amounts due for services, expenses, and other related charges.

D. *Disputed Invoices.* In the event of a disputed or contested invoice, Owner may withhold from payment only that portion so contested, and must pay the undisputed portion.

E. *Payments Upon Termination.*

1. In the event of any termination under paragraph 6.06, Design/Builder will be entitled to

invoice Owner and to receive full payment for all services performed and expenses incurred through the effective date of termination, subject to the provisions of paragraph 6.06.F.

2. In the event of termination by Owner for convenience or by Design/Builder for cause, Design/Builder, in addition to its entitlement under paragraph 4.02.E.1, shall be entitled to invoice Owner and to payment of a reasonable sum for services and expenses directly attributable to termination, including those provided and incurred both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Design/Builder's Subcontractors, and other related close-out costs, using methods and rates for Additional Services set forth in Exhibit C.

F. *Records of Design/Builder's Costs.* Design/Builder shall keep records of its costs pertinent to compensation under this Agreement in accordance with generally accepted accounting practices. To the extent necessary to verify Design/Builder's charges and upon Owner's timely request, Design/Builder shall make copies of such records available to Owner.

ARTICLE 5—ESTIMATES OF COST

5.01 Estimate of Probable Design/Build Cost

A. Design/Build Cost is the cost to Owner to design and construct the Work. Design/Build Cost is limited to Design Professional Services and Construction to be furnished by Design/Builder pursuant to this Agreement and the planned Comprehensive Agreement, and does not include costs of items not provided by Design/Builder including but not limited to cost of land and rights of way, compensation for damages to properties, interest and financing charges, and charges for services to be provided to Owner by others.

ARTICLE 6—GENERAL CONSIDERATIONS

6.01 Standards of Performance

A. The standard of care for all Design Professional Services will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality.

B. Design/Builder shall be responsible for the technical accuracy of the services it performs and

documents it prepares, and Owner shall not be responsible for discovering deficiencies in such services or documents. Design/Builder shall correct such deficiencies without additional compensation, and compensate Owner for any losses or damages resulting from such deficiencies, except to the extent such action is directly attributable to deficiencies in Owner-furnished information.

C. Design/Builder may employ such Subcontractors as Design/Builder deems necessary to assist in the performance of services, subject to reasonable objection by Owner. Design/Builder shall not be required to employ any Subcontractor unacceptable to Design/Builder.

D. This Agreement is based on requirements of applicable Laws or Regulations and Owner-mandated standards provided to Design/Builder applicable as of its Effective Date. Changes to these requirements after the Effective Date of the Agreement may be the basis for modifications to Owner's responsibilities or to the scope, schedule, and compensation for Design/Builder's services.

E. Owner shall be responsible for, and Design/Builder may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Owner pursuant to this Agreement. Design/Builder may use such requirements, reports, data, and information in performing services under this Agreement.

F. Owner and Design/Builder agree that the General Conditions of any contract between them for the final design and construction of the Work will be based upon "Standard General Conditions of the Contract Between Owner and Design/Builder" as prepared by the Engineers Joint Contract Documents Committee (Document No. D-700, 2002 Edition) unless both parties mutually agree to use other General Conditions as specifically set forth in Exhibit H, "Special Provisions." These General Conditions may be modified by Supplementary Conditions mutually agreed to by the Owner and Design/Builder.

G. At the request of the Owner, Design/Builder shall safeguard the proprietary nature of Owner-provided data.

6.02 Authorized Project Representatives

A. Contemporaneous with the execution of this Agreement, Design/Builder and Owner shall designate specific individuals to act as their respective representatives with respect to this Agreement. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to the Project.

6.03 Use of Documents

A. All Documents are instruments of service in respect to this Project and Design/Builder shall retain the ownership and property interest therein (including the right of reuse at the discretion of the Design/Builder) whether or not the Project is completed.

B. Owner may make and retain copies of Documents for information, reference, and use on this Project by Owner or others under contract to Owner. Such Documents are not intended or represented to be suitable for reuse by Owner or others on extensions of the Project or on any other project. Any such reuse or modification without written verification or adaptation by Design/Builder as appropriate for the specific purpose intended, or use of Documents prepared by Design/Builder to complete the Project using Owner's own forces or others, will be at Owner's sole risk and without liability or legal exposure to Design/Builder, or to Design/Builder's officers, directors, partners, employees, or Subcontractors. Owner shall indemnify and hold harmless Design/Builder and its officers, directors, partners, employees, and Subcontractors from all claims, costs, damages, losses, and expenses (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or resulting therefrom.

C. Design/Builder will be entitled to further compensation at rates to be agreed upon by Owner and Design/Builder for any verification or adaptation of the Documents for extensions of the Project or any other project.

6.04 Electronic Media

A. Copies of data furnished by Owner to Design/Builder or by Design/Builder to Owner that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, or graphics or of other types are furnished only for the convenience of the other party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

B. Because data stored on electronic media can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving data in an electronic format agrees that it will perform acceptance tests or procedures within 60 days after receipt of the data, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.

C. Design/Builder reserves the right to remove all indicia of ownership or involvement, including title blocks and seals, from each electronic drawing it produces.

D. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of data resulting from the use of software application packages, operating systems, or computer hardware differing from those used by data's creator.

6.05 Insurance

A. Design/Builder shall procure and maintain insurance as set forth in Exhibit D, "Insurance."

B. During the term of this Agreement, Owner shall cause Design/Builder and Design/Builder's Subcontractors to be listed as additional insureds on any general liability or property insurance policies carried by Owner which are applicable to the Project.

C. Owner and Design/Builder shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit D. Such certificates shall be furnished prior to commencement of Design/Builder's services and at renewal thereafter during the term of the Agreement.

D. All policies of property insurance shall contain provisions to the effect that Design/Builder's and Design/Builder's Subcontractors' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder.

6.06 Termination

A. The obligation to provide further services under this Agreement may be terminated for cause:

1. by either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement through no fault of the terminating party.

2. by Design/Builder upon seven days written notice if the Design/Builder's performance of

services has been delayed or suspended for more than 90 days for reasons beyond Design/Builder's control.

3. by the Owner if the Owner and Design/Builder cannot successfully negotiate a GMP satisfactory to the Owner to complete the whole Project, or if the Design/Builder fails to provide designs that fit the terms and conditions set forth by the Owner, including but not limited to being capable of completion for no more than the Design/Build Cost acceptable to the Owner.

B. Owner may terminate this Agreement for its convenience effective upon Design-Builder's receipt of notice from Owner.

C. In the case of termination by Design/Builder pursuant to Section 6.06.A.1, Design/Builder shall have no liability to Owner on account of such termination.

D. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure to perform as set forth in paragraph 6.06.A.1 ~~and~~ or .2 if the party receiving notice begins, within seven days of receipt, to correct its failure and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot reasonably be cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

E. The terminating party under paragraph 6.06.A may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Design/Builder to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project documents in orderly files.

F. In the event of termination of Design/Builder for cause by Owner, Owner may complete the services to be provided by Design/Builder as Owner deems expedient. In such case, Design/Builder will not be entitled to receive any payment until these services are complete. If the unpaid balance due Design/Builder under paragraph 4.02.E.1 exceeds all costs, losses, and damages sustained by Owner in completing the Design/Builder's services (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, 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 Owner.

6.07 Controlling Law

A. This Agreement is to be governed by the law of the state in which the Project is located.

6.08 Successors, Assigns, and Beneficiaries

A. Owner and Design/Builder each is hereby bound and the partners, successors, executors, administrators, and legal representatives of Owner and Design/Builder (and to the extent permitted by paragraph 6.08.B the assigns of Owner and Design/Builder) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

B. Neither Owner nor Design/Builder may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law or required of the Owner in connection with any financing of the Project. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

C. All design services under this Agreement must be performed by a design professional who remains licensed in good standing in the Commonwealth of Virginia throughout the term of this Agreement. To the extent that the Design/Builder subcontracts with a Subcontractor to perform these services, the Subcontractor must be Draper Aden Associates, the "Design Professional" named in Design/Builder's proposal, unless the Owner gives prior written approval of a different Design Professional, at its sole discretion.

6.09 Dispute Resolution

A. Owner and Design/Builder agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to exercising their rights under Exhibit F or other provisions of this Agreement, or under law.

B. If and to the extent that Owner and Design/Builder have agreed on a method and procedure for resolving disputes between them arising out of or relating to this Agreement, such dispute resolution method and procedure is set forth in Exhibit F, "Dispute Resolution." In the absence of such an agreement, the parties may exercise their rights under law.

6.10 Hazardous Environmental Condition

A. Owner acknowledges that Design/Builder is performing professional services for Owner and that Design/Builder is not and shall not be required to become an "operator," "generator," or "transporter" of Hazardous Materials which are or may be encountered at or near the Site in connection with Design/Builder's activities under this Agreement.

B. Owner represents to the best of its knowledge that a Hazardous Environmental Condition does not exist and it has disclosed to Design/Builder the existence of all known Hazardous Materials located at or near the Site, including type, quantity, and location.

C. If any Hazardous Environmental Condition is encountered or alleged, Design/Builder shall have the obligation to notify Owner and, to the extent required by applicable Laws and Regulations, appropriate governmental officials.

D. Except as required by Exhibit A, it is acknowledged by both parties that the Design/Builder's scope of services does not include any services related to a Hazardous Environmental Condition. If Design/Builder or any other party encounters a Hazardous Environmental Condition at the Site, or should it become known in any way that Hazardous Materials may be present at the Site or any adjacent areas in such a manner as to affect the performance of Design/Builder's services, Design/Builder may, at its option and without liability for consequential or any other damages, suspend performance of services on the Project until Owner: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition, and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

E. If the Design/Builder's services under this Agreement cannot be performed because of a Hazardous Environmental Condition, the existence of the condition shall justify Design/Builder terminating this Agreement for cause pursuant to paragraph 6.06.

6.11 Allocation of Risks – Indemnification

A. To the fullest extent permitted by law, Design/Builder shall indemnify and hold harmless Owner, and Owner's officers, directors, partners, agents, consultants, and employees from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury,

sickness, disease, or death, or to injury to or destruction of tangible property (other than completed Construction), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Design/Builder or Design/Builder's officers, directors, partners, employees, or Subcontractors. The indemnification provision of the preceding sentence is subject to and limited by the provisions agreed to by Owner and Design/Builder in Exhibit G, "Allocation of Risks," if any.

B. To the fullest extent permitted by law, Owner shall indemnify and hold harmless Design/Builder, Design/Builder's officers, directors, partners, agents, consultants, employees, and Subcontractors from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than completed Construction), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, partners, agents, consultants, or employees, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.

C. In addition to the indemnity provided under paragraph 6.11.B of this Agreement, and to the fullest extent permitted by law, Owner shall indemnify and hold harmless Design/Builder and its officers, directors, partners, employees, and Design/Builder's Subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) caused by, arising out of or relating to or resulting from a Hazardous Environmental Condition at, on, or under the Site, provided that (i) any such claim, cost, loss or damage is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than completed Construction), including the loss of use resulting therefrom, and (ii) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.

6.12 Notices

A. Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by certified mail (return receipt requested), by facsimile, or by

a commercial courier service. All notices shall be effective upon the date of receipt.

6.13 Survival

A. All express representations, indemnifications, or limitations of liability made in or given in this Agreement will survive ~~it's~~ the completion of services under this Agreement or termination for any reason.

6.14 Severability

A. Any provision or part of the Agreement held to be void or unenforceable under any law Law or regulation Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Design/Builder, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

6.15 Waiver

A. Non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

6.16 Headings

A. The headings used in this Agreement are for general reference only and do not have special significance.

6.17 Progress Schedule

A. Design/Builder shall adhere to the progress schedule set forth in Attachment 1 to Exhibit A, established in consultation with the Owner, as it may be adjusted from time to time by their mutual agreement and/or the time required for external reviews by permitting agencies.

ARTICLE 7- DEFINITIONS

7.01 Defined Terms

A. Wherever a term used in this Agreement (including the Exhibits) is printed with an initial capital letter, the term has the meaning indicated in the General Conditions described in paragraph 6.01.F, unless specifically defined in this Agreement. The meaning is applicable to both the singular and plural forms of the term.

B. Additional terms printed with initial capital letters have the meanings indicated which are applicable to both the singular and plural thereof:

1. *Agreement*—This "Standard Form of Agreement Between Owner and Design/Builder for Preliminary Services" including those Exhibits listed in Article 8.

2. *Documents*—The documents, including data, reports, Technical Exhibits, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Design/Builder to Owner pursuant to this Agreement.

3. *Effective Date of the Agreement*—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

4. *Reimbursable Expenses*—The expenses incurred directly by Design/Builder or its Subconsultants for transportation and subsistence; toll telephone calls and telegrams, copying, facsimile, and courier charges; reproduction of reports, drawings, specifications, and similar items; and, if authorized in advance by Owner in writing, overtime work requiring higher than regular rates. In addition, if authorized in advance by Owner in writing, Reimbursable Expenses shall also include expenses incurred for computer time and the use of other highly-specialized equipment.

5. *Technical Exhibits*—Documents prepared by Design/Builder which set forth Design/Builder's plan for meeting the Owner's requirements.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which has an Effective Date of

—

Owner:

Design/Builder:

6. *Design Professional*—Shall be Draper Aden Associates, as identified in Section 6.08.C.

ARTICLE 8-EXHIBITS

8.01 Exhibits Included

A. Exhibit A, "Design/Builder's Services," consisting of 12 pages.

B. Exhibit B, "Owner's Responsibilities," consisting of 2 pages.

C. Exhibit C, "Payments to Design/Builder for Services and Reimbursable Expenses," consisting of 1 pages.

D. Exhibit D, "Insurance," consisting of 2 pages.

E. Exhibit E, "Guranteed Maximum Price Proposal Form," consisting of 2 pages.

F. Exhibit F, "Dispute Resolution," consisting of 1 pages.

G. Exhibit G, "Allocation of Risks," consisting of 2 pages.

~~H. Exhibit H, "Special Provisions," consisting of pages.~~

8.02 Total Agreement

A. This Agreement (consisting of pages 1 to 10 inclusive, together with the Exhibits identified above) constitutes the entire agreement between Owner and Design/Builder and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified or canceled by a duly executed written instrument. In the event of an apparent conflict among the text of this Agreement and any Exhibits, the order of precedence among this Agreement and the Exhibits shall be the Exhibits in the order in which they appear take first priority, followed by the text of this Agreement.

County of Prince Edward, Virginia

Crowder Construction Company

By: _____

By: Otis A. Crowder

Title: _____

Title: President

License or Certificate No. and State: _____

Address for giving notices:

Address for giving notices:

1111 Burma Drive

Apex, NC 27539

Authorized Project Representative:

Authorized Project Representative: Carlos W. Norris

Title: _____

Title: Vice President

Phone Number: _____

Phone Number: 919-367-2000

Facsimile Number: _____

Facsimile Number: 919-367-2098

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.

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.

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 Guaranteed Maximum Price (GMP) for the comprehensive agreement.

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. Develop opinion of probable cost
7. Report to include financial analysis and Environmental Assessment per Rural Development guidelines.
8. 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 based on the following information:

1. Five (5) 25-ft deep borings at the proposed treatment structure
2. Three (3) 25-ft deep borings at the proposed preliminary treatment structure
3. Three (3) 25-ft deep borings at the proposed administration building
4. Three (3) 25-ft deep borings at the proposed finished water storage tank
5. Three (3) borings to refusal (bedrock elevation) at the proposed reservoir intake.
6. One (1) 30-ft deep boring at the proposed raw water pumping station.
7. One (1) rock core for raw water pumping station
8. Laboratory testing of select samples, including natural moisture content, gradations, Atterberg Limits, and Unconfined Rock Core Compression tests.
9. Clearing and erosion control as required to support the above activity.

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.
2. Includes equipment, travel expenses, time for two technicians, and laboratory costs.
3. Monthly Volatile Organic Compounds (VOC) sampling and testing.

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 backwash 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 Guaranteed Maximum Price Proposal. The final deliverable for this item is a 30% design submittal issued to the Owner for comments prior to GMP 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. Design would only include the structures and would not include mechanical, electrical, or above grade building work, etc.

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 Guaranteed Maximum Price (GMP) 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.

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
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 GMP 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.

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 GMP 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 Guaranteed Maximum Price Proposal. The final deliverable for this item is a 30% design submittal issued to the Owner for comments prior to GMP 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)
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 Guaranteed Maximum Price Proposal. The final deliverable for this item is a 30% design submittal issued to the Owner for comments prior to GMP 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. Conceptual Estimate

The Design/Builder will establish an order of magnitude estimate based on the PER and some level of preliminary design.

b. 30% Guaranteed Maximum Price

The Design/Builder will provide a detailed estimate and GMP 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 not to exceed price and assume the remaining risk for the cost of the Project as it is defined in the Comprehensive Agreement.

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 30% Guaranteed Maximum price 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.

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**
- C. Final Design**
- D. Submittal of designs to review agencies**
- E. Construction of the Project or portions thereof**
- F. Basic Engineering Services during Construction**
- G. Quality Control Testing and Inspections**
- H. Record Drawings**
- I. 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 Concept Level Estimate	Two Weeks from Concept Estimate
Report	Financial Model Completion	Two Weeks from Financial Model
Presentations to PEC Staff & Board	Monthly Updates As Needed	
Funding Assistance	Completion of Concept Level Estimate	GMP Proposal Submittal

Part 2. Engineering Services

A. Sandy River Water Treatment Plant

TASK	START	FINISH
Preliminary Engineering Report (PER)	NTP	4 Months from NTP (Submittal to VDH, Duration of approval cannot be anticipated)
TOC Sampling	NTP	6 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	4 Months from NTP	8 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	4 Months from NTP (Submittal to VDH, Duration of approval cannot be anticipated)
Hampden-Sydney Water Main	NTP	3 Months from NTP, IFC Set Issued
Preliminary Water Main Design	NTP	4 Months from NTP
Booster Station Site Plan	2 Months from NTP	4 Months from NTP
Water Storage Tank Design	2 Months from NTP	6 Months from NTP
Environmental Permit Preparation	2 Months from NTP	6 Months from NTP

Part 3. Preconstruction Services

TASK	START	FINISH
Conceptual Estimate	PER Completed	2 Months PER Completion
30% GMP 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	30% GMP Proposal Submitted
Construction Planning	NTP	30% GMP Proposal Submitted

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

A1.01 — Study and Report Phase

— A. — Design/Builder shall:

1. — Consult with Owner to define and clarify Owner's requirements for the Project including Owner's budgetary limitations, if any, and review of Conceptual Documents, if any, and available data.
2. — Request that Owner obtain data or services of the types described in Exhibit B which are not part of Design/Builder's Basic Services and are reasonably required to enable Design/Builder to complete its Basic Services and Additional Services, if any.
3. — Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project described by Design/Builder, including but not limited to mitigating measures identified in the environmental assessment.
4. — Identify and evaluate _____ alternate solutions available to Owner and, after consultation with Owner, recommend to Owner those solutions which in Design/Builder's judgment meet Owner's requirements for the Project.
5. — Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches and conceptual design criteria, and appropriate exhibits; and indicate the applicable requirements, considerations involved, and recommended alternate solutions. This Report will be accompanied by Design/Builder's estimate of Design/Build Cost for each recommended solution. This Report shall include descriptions of any deviations from Owner's requirements.
6. — Perform or furnish the following additional Study and Report Phase tasks or deliverables: _____.
7. — Furnish _____ review copies of the Report (and any other deliverables) to Owner within _____ days of authorization to begin services and review it with Owner.
8. — Revise the Report (and any other deliverables) in response to Owner's comments, as appropriate, and furnish copies of the revised Report (and any other deliverables) to the Owner within _____ days of receipt of Owner's comments.

— B. — Design/Builder's services under the Study and Report Phase will be considered complete on the date when the copies of the revised Report (and any other deliverables) have been delivered to Owner.

A1.02 — Technical Exhibit Phase

— A. — After acceptance by Owner of the Report, selection by Owner of a recommended solution and indication of any specific modifications or changes in the scope, extent, character or design requirements of the Project desired by Owner, and upon written authorization from Owner, Design/Builder shall:

1. — Advise Owner if additional reports, data or other information or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data or other information and services.
2. — On the basis of the above acceptance, selection, and authorization, prepare the following Technical Exhibits:
 - a. — drawings;
 - b. — specifications;
 - c. — other graphic or written materials;
 - d. — criteria and information concerning Owner's requirements for the Project;
 - e. — a basis of design;
 - f. — design objectives and constraints;
 - g. — space, capacity and performance requirements;
 - h. — flexibility and expandability requirements; and

i.—quality standards

3.—These Technical Exhibits will show or describe the character, scope, and intent of, or relate to, the Work to be performed or furnished by or for Design/Builder. Such Technical Exhibits will be taken to a point of ___ percent of the final design.

NOTE TO USER

The percent of the final design can vary from 5 to 35 depending upon the type and complexity of the Project, and the extent to which the design is to be completed in order to define the full scope of the Work and agree on a Contract Price and Contract Times.

4.—Provide necessary field surveys and topographic and utility mapping for the purpose of preparing Technical Exhibits. Utility mapping will be based upon information obtained from utility owners.

5.—Provide in writing to Owner descriptions of any deviations in the Technical Exhibits from either the Owner's requirements or the Report.

6.—Furnish or provide the following additional Technical Exhibit Phase tasks or deliverables: ___.

7.—Furnish to Owner ___ final copies of the Technical Exhibits within ___ days after authorization to proceed with this phase, and review them with Owner.

8.—Revise the Technical Exhibits (and any other deliverables) in response to Owner's comments, as appropriate, and furnish ___ copies of the revised Technical Exhibits to the Owner within ___ days of receipt of Owner's comments.

—B.—Design/Builder's services under the Technical Exhibit Phase will be considered complete on the date when final copies of the Technical Exhibits (and any other deliverables) have been delivered to Owner.

A1.03 — Proposal Phase

—A.—After acceptance by Owner of the Technical Exhibits and upon written authorization by Owner to proceed, Design/Builder shall submit a Proposal for the completion of the Work to Owner in the form included as Exhibit E to this agreement.

—B.—The Proposal Phase will be considered complete upon signing of the Contract between Owner and Design/Builder to complete the Work, or cessation of contract negotiations between Owner and Design/Builder.

ARTICLE A2 — ADDITIONAL SERVICES

A2.01 — Owner's Authorization in Advance Required

—A.—If authorized in writing by Owner, Design/Builder shall furnish or obtain from others Additional Services of the types listed below. These services will be paid for by Owner as indicated in Article 4 of the Agreement.

1.—Prepare applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; prepare or review environmental assessments and impact statements; review and evaluate the effects on the design requirements for the Project of any such statements and documents prepared by others; and assist in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.

2.—Make measured drawings of or investigate existing conditions or facilities, or verify the accuracy of drawings or other information furnished by Owner.

3.—Perform services resulting from significant changes in the scope, extent or character of the portions of the Project presented or specified by Design/Builder or its design requirements including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revise previously accepted studies, reports, Technical Exhibits, or other Contract Documents when such revisions are required by changes in Laws

~~or Regulations enacted subsequent to the Effective Date of the Agreement, or are due to any other causes beyond Design/Builder's control.~~

~~4. Perform services resulting from evaluation by Design/Builder during the Study and Report Phase at Owner's request of alternative solutions in addition to those specified in Article A1.01.~~

~~5. Perform services required as a result of Owner's providing incomplete or incorrect Project information, with respect to Exhibit B.~~

~~6. Provide renderings or models for Owner's use.~~

~~7. Undertake investigations and studies of Owner's operations including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; prepare feasibility studies, cash flow and economic evaluations, rate schedules, and appraisals; assist in obtaining financing for the Project; evaluate processes available for licensing, and assist Owner in obtaining process licensing, audits, or inventories required in connection with construction performed by Owner.~~

~~8. Perform services requiring out-of-town travel by Design/Builder, other than for visits to the Site or Owner's office.~~

~~9. Prepare for, coordinate with, participate in, and respond to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructibility review requested by Owner; and perform or furnish services required to revise studies, reports, Technical Exhibits or other Proposal Documents as a result of such review processes.~~

NOTE TO USER

If Design/Builder's services in this Agreement are to include services related to a Hazardous Environmental Condition, modifications will be necessary at paragraph 6.10 of the Agreement.

SUGGESTED FORMAT
(for use with D-510, 2002 Edition)

This is EXHIBIT B, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Design/Builder for Preliminary Services** 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 ~~included in the Proposal~~ required in connection with the Comprehensive Agreement.

B. As appropriate, ~~Provide~~ 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~~ Construction standards which Owner ~~will~~ 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 ~~Basic and Additional~~ Engineering Services. Such additional information or data ~~would generally~~ may include the following:

1. Property descriptions;
2. Zoning, deed, and other land use restrictions;
3. Property, boundary, easement, right-of-way, and other special engineering surveys or data, including establishing relevant reference points for design and ~~construction~~ Construction which in Owner's Design/Builder's judgment are necessary to enable Design/Builder to proceed with the ~~Work~~ services required by this Agreement;
4. Data prepared by or services of others, including without limitation explorations and tests of subsurface conditions at or contiguous to the Site, ~~drawings~~ 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;
5. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas; and
6. Data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.

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 ~~Additional Services~~ Services Not Included (Currently) as set forth in ~~Article A2~~ Exhibit A, Part 4.

H. Arrange for safe access to and make all provisions for Design/Builder and Design/Builder's subconsultants to enter upon public and private property as may reasonably be required for Design/Builder to perform services under the Agreement.

I. Examine all alternate solutions, studies, reports, sketches, ~~drawings, specifications~~ 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 reasonable 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.

NOTE TO USER

~~EJCDC recommends that both this Agreement and the Design/Build Agreement for final design and construction contain a list designating responsibilities for obtaining and paying for permits. (See also paragraphs 6.08 and 8.01.A.6.g of the General Conditions.)~~

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~~ Project peer review, value engineering, and ~~constructability~~ constructability review.

M. Additional Owner responsibilities:

1. Costs of all permits to be paid directly by the Owner.
2. To the extent reasonably possible, arrange for safe access to and make all provisions for Design/Builder and Design/Builder's Subcontractors to enter upon public and private property as may reasonably be required for Design/Builder to perform services under the Agreement.
3. Coordinate meetings with Crewe and Burkeville or any other potential wholesale customers as needed.
4. Owner will pay the cost for any utility connections fees to the new plant facilities (e.g. Dominion Power, Verizon, etc.)
5. Owner will provide and pay for all third party reviews of the preliminary design and engineering services as needed.
6. Costs associated with railroad permits/flagmen will be paid by the the Owner.

SUGGESTED FORMAT
(for use with D-510, 2002 Edition)

This is **EXHIBIT C**, consisting of 1 pagespage, referred to in and part of the **Agreement between Owner and Design/Builder for Preliminary Services** dated , .

Initials
Owner: _____
Design/Builder: _____

Payments to Design/Builder for Services and Reimbursable Expenses

Article 4 of the Agreement is supplemented as follows:

ARTICLE 4-PAYMENTS TO DESIGN/BUILDER – LUMP SUM METHOD OF PAYMENT

C4.01 For Basic Services Having a Determined Scope

A. Owner shall pay Design/Builder for the Scope of Services ~~Basic 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 ~~Basic Services~~ in Exhibit A allocated as follows:

- a. ~~Study and Report Phase~~ \$
- a. Financial Feasibility Services \$29,000
- ~~Technical Exhibit Phase~~ \$
- b. Engineering Services \$1,599,000
- ~~Proposal Phase~~ \$
- 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.

~~**C4.02 For Additional Services Not Covered by Lump Sum**~~

~~A. Owner shall pay Design/Builder for Additional Services as follows:~~

~~1. For services of Design/Builder's principals and employees engaged directly in providing services pursuant to Article A2 of Exhibit A an amount equal to the cumulative hours devoted to such services by each class of Design/Builder's employees times hourly rates for each applicable billing class for all Additional Services, plus Reimbursable Expenses and Design/Builder's Subcontractors' charges, if any. The Design/Builder's Standard Hourly Rates and Reimbursable Expenses Schedule is attached to this Exhibit C as Appendix 1. The total compensation for services under this paragraph is estimated to be \$ based upon Contract Times of months.~~

~~2. The amounts payable to Design/Builder for Reimbursable Expenses will be the services related internal expenses actually incurred or allocated by Design/Builder; plus all invoiced external Reimbursable Expenses allocable to the services, the latter multiplied by a factor of .~~

~~3. Whenever compensation to Design/Builder herein is stated to include charges of Design/Builder's Subcontractors, those charges to Owner shall be the amounts billed to Design/Builder times a factor of .~~

~~4. Standard Hourly Rates set forth in Appendix 1 to this Exhibit C include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.~~

SUGGESTED FORMAT
(for use with D-510, 2002 Edition)

~~This is EXHIBIT C, consisting of ___ pages, referred to in and part of the Agreement between Owner and Design/Builder for Preliminary Services dated ___, ___.~~

Initials
Owner: _____
Design/Builder: _____

Payments to Design/Builder for Services and Reimbursable Expenses

Article 4 of the Agreement is supplemented as follows:

**ARTICLE 4 — PAYMENTS TO DESIGN/BUILDER —
DIRECT LABOR COSTS TIMES A FACTOR**

**C4.01 — For Basic Services Having a Determined
Scope and Additional Services**

— A. Owner shall pay Design/Builder for Basic Services and Additional Services as follows:

— 1. An amount equal to Design/Builder's Direct Labor Costs times a factor of ___ for all Basic Services and Additional Services by principals and employees engaged directly in providing such services, plus Reimbursable Expenses, plus Design/Builder's Subcontractors' charges, if any, all for an estimated total compensation for services of \$___, based on the following assumed distribution of compensation:

- a. Study and Report Phase — \$
- b. Technical Exhibit Phase — \$
- c. Proposal Phase — \$
- d. Additional Services — \$

— 2. Design/Builder may alter the distribution of compensation between individual phases and Additional Services, noted herein, to be consistent with services actually rendered, but shall not exceed the total compensation amount unless approved in writing by Owner.

C4.02 — Direct Labor Costs

— A. Direct Labor Costs means salaries and wages paid to personnel but does not include payroll related costs or benefits.

— B. The Direct Labor Costs factor includes the cost of customary and statutory benefits including, but not limited to, social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto; the cost of general and administrative overhead which includes salaries and wages

~~of principals and employees engaged in business operations not directly chargeable to projects, plus non Project operating costs, including but not limited to, business taxes, legal, rent, utilities, office supplies, insurance and other operating costs, but excluding operating margin or profit.~~

C4.03 — For Reimbursable Expenses

— A. Owner shall pay Design/Builder for Reimbursable Expenses.

— B. The amounts payable to Design/Builder for Reimbursable Expenses will be the services related internal expenses actually incurred or allocated by Design/Builder; plus all invoiced external Reimbursable Expenses allocable to the services, the latter multiplied by a factor of ___.

**C4.04 — For Design/Builder's Subcontractor's
Charges**

— A. Whenever compensation to Design/Builder herein is stated to include charges of Design/Builder's Subcontractors, those charges to Owner shall be the amounts billed to Design/Builder times a factor of ___.

C4.05 — Other Provisions Concerning Payment

— A. *Progress Payments.* The portion of the amounts invoiced for Design/Builder's services which are on account of services rendered on the basis of the Direct Labor Costs Times a Factor Plus a Percentage Fee Method of Payment will be billed based on the Direct Labor Costs of the cumulative hours devoted to the services by all of Design/Builder's employees, times the Direct Labor Costs factor, plus a percentage fee, plus Reimbursable Expenses and Design/Builder's Subcontractors' charges incurred during the billing period.

— B. *Estimated Compensation Amounts.*

— 1. Design/Builder's estimate of the amounts that will become payable for Basic Services and Additional Services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Design/Builder under

~~the Agreement. Notwithstanding the fact that the estimated amounts for Basic Services or Additional Services are exceeded, Design/Builder shall receive appropriate compensation based on the Direct Labor Costs Times a Factor Plus a Percentage Fee Method of Payment for all Basic Services and Additional Services furnished or performed under this Agreement, in accordance with the provisions as set forth in this Exhibit C.~~

~~2. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Design/Builder that a compensation~~

~~amount thus estimated will be exceeded, Design/Builder shall give Owner written notice thereof. Promptly thereafter Owner and Design/Builder shall review the matter of services remaining to be performed and compensation for such services. Owner shall either agree to such compensation exceeding said estimated amount or Owner and Design/Builder shall agree to a reduction in the remaining services to be rendered by Design/Builder, so that total compensation for such services will not exceed said estimated amount when such services are completed.~~

SUGGESTED FORMAT
(for use with D-510, 2002 Edition)

This is ~~EXHIBIT C~~, consisting of ___ pages, referred to in and part of the ~~Agreement between Owner and Design/Builder for Preliminary Services~~ dated ___, ___.

Initials
Owner: _____
Design/Builder: _____

Payments to Design/Builder for Services and Reimbursable Expenses

Article 4 of the Agreement is supplemented as follows:

~~ARTICLE 4 — PAYMENTS TO DESIGN/BUILDER —
STANDARD HOURLY RATES METHOD OF
PAYMENT~~

~~C4.01 — For Basic Services Having a Determined
Scope and Additional Services~~

~~— A. Owner shall pay Design/Builder for Basic
Services and Additional Services as follows:~~

~~— 1. An amount equal to cumulative hours
devoted to the Project by each class of
Design/Builder's employees times Standard Hourly
Rates for each applicable billing class for all services
rendered, plus Reimbursable Expenses and
Design/Builder's Subcontractors' charges, if any.~~

~~— 2. Design/Builder's Standard Hourly Rates and
Reimbursable Expenses Schedule is attached to this
Exhibit C as Appendix 1.~~

~~— 3. The total compensation for services under
this paragraph is estimated to be \$___, based on the
following assumed distribution of compensation:~~

- ~~_____ a. Study and Report Phase _____ \$~~
- ~~_____ b. Technical Exhibit Phase _____ \$~~
- ~~_____ c. Proposal Phase _____ \$~~
- ~~_____ d. Additional Services _____ \$~~

~~C4.02 — For Reimbursable Expenses~~

~~— A. Owner shall pay Design/Builder for
Reimbursable Expenses:~~

~~— B. The amounts payable to Design/Builder for
Reimbursable Expenses will be the services related
internal expenses actually incurred or allocated by
Design/Builder; plus all invoiced external Reimbursable
Expenses allocable to the services, the latter multiplied by
a factor of ___.~~

~~C4.03 — For Design/Builder's Subcontractor's
Charges~~

~~— A. Whenever compensation to Design/Builder
herein is stated to include charges of Design/Builder's
Subcontractors, those charges to Owner shall be the
amounts billed to Design/Builder times a factor of ___.~~

~~C4.04 — Standard Hourly Rates~~

~~— A. Standard Hourly Rates set forth in Appendix 1
to this Exhibit C include salaries and wages paid to
personnel in each billing class plus the cost of customary
and statutory benefits, general and administrative
overhead, non project operating costs, and operating
margin or profit.~~

~~C4.05 — Other Provisions Concerning Payment~~

~~— A. *Progress Payments.* The portion of the amounts
billed for Design/Builder's services which are related to
services rendered on the basis of the Standard Hourly
Rates Method of Payment will be billed based on the
cumulative hours devoted to the Project by each class of
Design/Builder's employees, times the Standard Hourly
Rate for each such employee class, plus Reimbursable
Expenses and Design/Builder's Subcontractors' charges, if
any, incurred during the billing period.~~

~~— B. *Estimated Compensation Amounts*~~

~~— 1. Design/Builder's estimate of the amounts
that will become payable for Basic Services are only
estimates for planning purposes, are not binding on
the parties, and are not the minimum or maximum
amounts payable to Design/Builder under the
Agreement. Notwithstanding the fact that the
estimated amounts for Basic Services and Additional
Services are exceeded, Design/Builder shall receive
appropriate compensation based on the Standard
Hourly Rates Method of Payment for all Basic
Services and Additional Services furnished or
performed under this Agreement, in accordance with
the provisions as set forth in this Exhibit C.~~

~~2. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Design/Builder that a compensation amount thus estimated will be exceeded, Design/Builder shall give Owner written notice thereof. Promptly thereafter Owner and Design/Builder shall review the matter of services remaining to be performed and compensation for such~~

~~services. Owner shall either agree to such compensation exceeding said estimated amount or Owner and Design/Builder shall agree to a reduction in the remaining services to be rendered by Design/Builder, so that total compensation for such services will not exceed said estimated amount when such services are completed.~~

SUGGESTED FORMAT
(for use with D-510, 2002 Edition)

This is **Appendix 1 to EXHIBIT C**, consisting of _____ pages,
referred to in and part of the **Agreement between Owner and
Design/Builder for Preliminary Services** dated __, __.

Initials
Owner: _____
Design/Builder: _____

Standard Hourly Rates and Reimbursable Expenses Schedule

_____ Current agreements for engineering services stipulate that the rates are subject to review and adjustment per Exhibit C. Standard Hourly Labor Rates and Reimbursable Expense rates on the date of the Agreement are:

_____ Billing Class 9	_____ Senior Associate	_____ \$ ___/hour
_____ Billing Class 8	_____ Staff Manager	_____ /hour
_____ Billing Class 7	_____ Professional VI	_____ /hour
_____ Billing Class 6	_____ Professional V	_____ /hour
_____ Billing Class 5	_____ Professional IV	_____ /hour
_____ Billing Class 4	_____ Professional III	_____ /hour
_____ Billing Class 3	_____ Professional II	_____ /hour
_____ Billing Class 2	_____ Technician II	_____ /hour
_____ Billing Class 1	_____ Technician I	_____ /hour
_____ Principal		_____ /hour
_____ Support Staff		_____ /hour
_____ FAX		_____ \$ ___/page
_____ 8"x11" Copies/Impression		_____ /page
_____ Blueprint Copies		_____ /sq. ft.
_____ Reproducible Copies (Mylar)		_____ /sq. ft.
_____ Reproducible Copies (Paper)		_____ /sq. ft.
_____ Mileage (auto)		_____ /mile
_____ Field Truck Daily Charge		_____ /day
_____ Mileage (Field Truck)		_____ /mile
_____ Field Survey Equipment		_____ /day
_____ Confined Space Equipment		_____ /day plus expenses
_____ Resident Project Representative Equipment		_____ /month
_____ Computer CPU Charge		_____ /hour
_____ Personal Computer Charge		_____ /hour
_____ CAD Charge		_____ /hour
_____ CAE Terminal Charge		_____ /hour
_____ VCR and Monitor Charge		_____ /day, \$ ___/week, or \$ ___/month
_____ Video Camcorder		_____ /day, plus \$ ___/tape
_____ Electrical Meters Charge		_____ /week, or \$ ___/month
_____ Flow Meter Charge		_____ /week, or \$ ___/month
_____ Rain Gauge		_____ /week, or \$ ___/month
_____ Sampler Charge		_____ /week, or \$ ___/month
_____ Dissolved Oxygen Tester Charge		_____ /week
_____ Fluorometer		_____ /week
_____ Laboratory Pilot Testing Charge		_____ /week, or \$ ___/month
_____ Soil Gas Kit		_____ /day
_____ Submersible Pump		_____ /day
_____ Water Level Meter		_____ /day, or \$ ___/month
_____ Soil Sampling		_____ /sample
_____ Groundwater Sampling		_____ /sample

~~Health and Safety Level D _____/day~~
~~Health and Safety Level C _____/day~~
~~Electronic Media Charge _____/hour~~
~~Long Distance and Mobile Phone Calls _____ At Cost~~

SUGGESTED FORMAT
for use with D-510, 2002 Edition)

This is **EXHIBIT D**, consisting of 2 pages, referred to in and part of
the **Agreement between Owner and Design/Builder for
Preliminary Services** dated __, __.

Initials
Owner: _____
Design/Builder: _____

Insurance

Paragraph 6.05 of the Agreement is amended and supplemented to include the following agreement of the parties:

D6.05 Insurance

The limits of liability for the insurance required by paragraph 6.05 of 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> |
| 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: \$2,000,000
Each Occurrence (Bodily Injury and
Property Damage): \$1,000,000

2. ~~Property Damage Liability Insurance:~~ _____ \$

3. Property Insurance: \$1,000,000

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

SUGGESTED FORMAT
(for use with D-510, 2002 Edition)

This is **EXHIBIT E**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Design/Builder for Preliminary Services** dated __, __.

Initials
Owner: _____
Design/Builder: _____

Proposal Form

ARTICLE E1 – GUARANTEED MAXIMUM PRICE PROPOSAL FORM

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 twenty-one (21) 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 Guaranteed Maximum Price Proposal is based upon.
- B. The Design/Builder shall propose a Guaranteed Maximum Price (GMP), 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 GMP Proposal is prepared, the Design/Builder shall provide in the GMP 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 GMP 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 GMP Proposal.
 - b. A list of the clarifications and assumptions made by the Design/Builder in the preparation of the GMP proposal to supplement the information contained in the Drawings and Specifications.
 - c. The proposed GMP 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 GMP Proposal was based upon.
- E. The Design/Builder shall meet with the Owner to review the GMP 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 GMP Proposal, its basis, or both.

NOTES TO USER

- ~~1. A Proposal Form should be included as an exhibit to this Preliminary Agreement. A sample Proposal Form is not provided herein. However, users are referred to Section III of EJCDC Document No. D-001, Guide to Use of EJCDC Design/Build Documents (2002 Edition) for guidance in preparing a proposal form for a particular project.~~
- ~~2. Note that in Exhibit B, the Owner is to prepare certain contract Documents including the Agreement, General Conditions, Supplementary Conditions, and the Bond Forms. These Contract Documents should be specifically identified in the Proposal Form.~~
- ~~3. In preparing the Proposal Form, the Owner should consider which options for establishing Contract Price and Contract Times should be available to the Design/Builder.~~
- ~~4. Note that in preparing the Proposal Form for use with this Preliminary Agreement, it is not necessary to refer to "Proposal Documents." Rather, the term "Contract Documents" should be used.~~
- ~~5. If the Owner has prepared any Conceptual Documents for the work, such documents need to be specifically identified in the Proposal Form. The Design/Builder should be required to specifically identify in the Proposal any deviations from the Conceptual Documents.~~

SUGGESTED FORMAT
(for use with D-510, 2002 Edition)

This is **EXHIBIT F**, consisting of 1 pagespage, referred to in and part of the **Agreement between Owner and Design/Builder for Preliminary Services** dated __, __.

Initials
Owner: _____
Design/Builder: _____

Dispute Resolution

Paragraph 6.09 of the Agreement is amended and supplemented to include the following agreement of the parties:

F6.09 Dispute Resolution

A. Owner and Design/Builder agree that they shall submit any and all unsettled claims, counterclaims, disputes and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("disputes"), to mediation by a mutually agreeable mediator.

B. All disputes between Owner and Design/Builder not resolved under paragraph F6.09.A will be decided by arbitration in accordance with the rules and procedures of the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining, subject to the limitations and restrictions stated in paragraph F6.09.B.2 below. The mediator of any dispute submitted to mediation under this Agreement shall not serve as arbitrator of such dispute unless otherwise agreed. This agreement so to arbitrate and any other agreement or consent to arbitrate entered into in accordance herewith as provided in this paragraph F6.09 will be specifically enforceable under the prevailing law of any court having jurisdiction.

1. Notice of the demand for arbitration must be filed in writing with the other party to the Agreement and with the the American Arbitration Association. The demand must be made within a reasonable time after the claim, dispute, or other matter in question has arisen. In no event may the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute, or other matter in question would be barred by the applicable statute of limitations.

2. No arbitration arising out of or relating to this Agreement will include by consolidation, joinder or in any other manner any other person or entity who is not a party to this Agreement.

C. By written consent signed by all the parties to this Agreement and containing a specific reference hereto, the limitations and restrictions contained in paragraph F6.09.B.2 may be waived in whole or in part as to any claim, counterclaim, dispute, or other matter specifically described in such consent. No consent to arbitration in respect of a specifically described claim, counterclaim, dispute, or other matter in question will constitute consent to arbitrate any other claim, counterclaim, dispute, or other matter in question which is not specifically described in such consent or which is with any party not specifically described therein.

D. The award rendered by the arbitrators will be final and binding, and judgment may be entered upon it in any court having jurisdiction thereof.

E. The arbitration may, at the initiation of either party, include by consolidation or joinder an individual or entity who is not a party to the Agreement if:

1. the inclusion of such other individual or entity is necessary if complete relief is to be afforded among those who are already parties to the arbitration; and

2. such other individual or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration and which will arise in such proceedings; and

3. the written consent of the other individual or entity sought to be included has been obtained for such inclusion.

SUGGESTED FORMAT
(for use with D-510, 2002 Edition)

This is **EXHIBIT G**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Design/Builder for Preliminary Services** 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.

Paragraph 6.11 of the Agreement is amended and supplemented to include the following agreement of the parties:

G6.11.D 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.

OR

~~1. *[Design/Builder's Liability Limited to Amount of Insurance Proceeds]*~~

~~Design/Builder shall procure and maintain insurance as required by and set forth in Exhibit E to this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, 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 (hereafter "Owner's Claims"), shall not exceed the total insurance proceeds paid on behalf of or to Design/Builder by Design/Builder's insurers in settlement or satisfaction of Owner's Claims under the terms and conditions of Design/Builder's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense, and appeal). If no such insurance coverage is provided with respect to Owner's Claims, then 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 such uninsured Owner's Claims shall not exceed \$___.~~

(Exhibit G – Allocation of Risks)

OR

~~1. [Design/Builder's Liability Limited to the Sum of \$___]~~

~~Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, 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 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 \$~~

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

To the fullest extent permitted by law, and notwithstanding any other provision in the Agreement, Design/Builder and Design/Builder's officers, directors, partners, employees, agents, and Subcontractors shall not be liable to Owner or anyone claiming by, through, or under Owner 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., and including but not limited to:

[NOTE: List here particular types of damages that Design/Builder may be concerned about by reason of the nature of the project or specific circumstances, e.g., cost of replacement power, loss of use of equipment or of the facility, loss of profits or revenue, loss of financing, regulatory fines, etc. If the parties prefer to leave the language general, then end the sentence after the phrase "or any of them".]

[NOTE: The above exclusion of consequential and other damages can be converted to a limitation on the amount of such damages, following the format of paragraph 6.11.D.1 above, by providing that "Design/Builder's total liability for such damages shall not exceed \$___."]

