

August 23, 2022

At the special meeting of the Board of Supervisors of Prince Edward County, held at the Court House, thereof, on Tuesday, the 23<sup>rd</sup> day of August, 2022; at 7:00 p.m., there were present:

Pattie Cooper-Jones  
J. David Emert  
Llew W. Gilliam, Jr.  
Peter Y. Gur  
Odessa H. Pride  
Jerry R. Townsend

Absent: Carol R. Stiff, Cannon Watson

Also present: Douglas P. Stanley, County Administrator; Sarah Elam Puckett, Assistant County Administrator; and Terri Atkins Wilson, County Attorney; Jimmy Sanderson, Davenport & Co.; Sharon Pandak, Pandak & Taves, PLLC (via Zoom); Tom Frederick, Pennoni Engineering (via Zoom); Joe Hines, Timmons Group and Prince Edward County Infrastructure; David Saunders, Timmons Group; Justin Curtis, AquaLaw; and Cody Stanger, GRG.LTD

Chairman Pride called the special meeting to order.

Chairman Pride stated:

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

Chair Pride offered the invocation and led the Pledge of Allegiance.

Mr. Stanley announced that Supervisor Stiff could not be present due to a conflicting meeting with Crossroads Community Services Board; he has not heard from Supervisor Watson.

Chair Pride stated there was a quorum present.

In Re: Public Hearing & Public Input Period – PPEA Project Interim Agreement

Mr. Stanley said that on December 9, 2021 the Prince Edward County Board of Supervisors accepted the unsolicited proposal of Prince Edward County Infrastructure, LLC (PECI) for the design and construction of a water system serving the County. The Board made a determination to use competitive negotiation in selecting a contractor;

to authorize the County Administrator to post the non-confidential portions of the proposal and advertise for the receipt of competing proposals for a period of not less than 45 days. The County received no competing proposals.

Since that time, County staff and our selected consultants have been negotiating an interim agreement with PECEI for the development, design and construction of a water treatment plant and distribution system consistent with the Design-Builder's proposal and the County's guidelines and procedures concerning the Public-Private Education Facilities and Infrastructure Act of 2002 (PPEA) as adopted by the Board on July 8, 2008.

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

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

Following the public hearing, the Board will be requested to go into closed session to receive an update on the project cost and proposed rate structure prior to taking a vote on the interim agreement.

Mr. Stanley introduced the attorneys, consultants and other participants in the meeting: Attorney Sharon Pandak and Thomas Frederick, who are part of the PPEA review team; Joe Hines, Timmons Group and Prince Edward County Infrastructure; David Saunders, Timmons Group (via Zoom); Justin Curtis, the AquaLaw attorney working on the permit for the Renewal Application; Jimmy Sanderson, Davenport & Co.; and Cody Stanger, GRG.LTD Rate Consultant, provided the rate models.

Chair Pride opened the public hearing.

Jesse Yeatts, Lockett District, thanked the Board for taking action on this [issue]. He said this is way past due.

Joe Bass, Lockett District, stated the article in The Farmville Herald mentioned a water intake, a pump station and a water treatment [plant]; he asked if there will be sewage treatment at the facility. Mr. Stanley said there is no sewage treatment plant as part of this project, and that this is to provide water from the reservoir, treat it so it is drinkable, and distribute it to the right locations.

Sally Bass, Lockett District, asked where the treatment facility will be located. Mr. Stanley said the proposed location of the water treatment facility is immediately downstream of the dam.

Joe Hines, Timmons Group, stated the proposed facility will be on County-owned property, about 1,500 feet from the dam, and about 2,500 feet from the actual intake structure location, adding that if you look across the Marrowbone Bridge (Route 605) in Rice, it will be off to the left. He said the intake must be installed at the deepest part of the reservoir. He said they are aware of concern regarding the smell, but water treatment plants have very little smell associated with them. He reported that liquid chlorine will be used; in the room, there would be the smell of chlorine, similar to Clorox, and it is enclosed.

There being no one further wishing to speak, Chair Pride closed the public hearing.

In Re: Closed Session

Supervisor Emert made a motion, seconded by Supervisor Gur, that the Board convene in Closed Session for discussion of the investment of public funds in the Sandy River Reservoir Water Treatment and Distribution Project where competition and bargaining are involved, and if such discussions are made public initially, the financial interest of the County would be adversely affected, pursuant to the exemption provided for in Section 2.2-3711(A)(6) of the *Code of Virginia*; the motion carried:

Aye:	Pattie Cooper-Jones	Nay:	None
	J. David Emert		
	Llew W. Gilliam, Jr.		
	Peter Y. Gur		
	Odessa H. Pride		
	Jerry R. Townsend		
Absent:	Carol R. Stiff		
	Cannon Watson		

The Board returned to regular session by motion of Supervisor Emert, seconded by Supervisor Townsend and adopted as follows:

Aye: Pattie Cooper-Jones  
J. David Emert  
Llew W. Gilliam, Jr.  
Peter Y. Gur  
Odessa H. Pride  
Jerry R. Townsend  
Cannon Watson  
Absent: Carol R. Stiff  
Nay: None

On motion of Chair Pride, and seconded by Supervisor Townsend and carried by the following roll call vote:

Aye: Pattie Cooper-Jones  
J. David Emert  
Llew W. Gilliam, Jr.  
Peter Y. Gur  
Odessa H. Pride  
Jerry R. Townsend  
Cannon Watson  
Absent: Carol R. Stiff  
Nay: None

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

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

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

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

Supervisor Watson entered the meeting during the closed session.

Supervisor Townsend made a motion, seconded by Supervisor Gilliam, to accept the Interim Agreement as drafted with the Prince Edward County Infrastructure, LLC for Design and Construction of the Sandy River Reservoir Water Treatment and Distribution Project, and to authorize the County Administrator to execute the Agreement; and further, that the County's legal counsel be authorized to commence negotiations on the water contract with the Department of General Services; the motion carried:

Aye: Pattie Cooper-Jones  
J. David Emert  
Llew W. Gilliam, Jr.  
Peter Y. Gur  
Odessa H. Pride  
Jerry R. Townsend  
Cannon Watson  
Absent: Carol R. Stiff  
Nay: None

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

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

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

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

**RECITALS:**

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

8. Having considered Design-Builder's Conceptual Phase Proposal and other information, the County has determined that it is in the best interest of the County and the public purposes of the PPEA to authorize Design-Builder to commence preparation of the Detailed Phase Proposal and to perform certain tasks in accordance with the following terms and conditions.

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

1. **Incorporation of Recitals.** The foregoing recitals are true and correct and are incorporated herein by reference.
2. **Definitions.** The following definitions apply to this Agreement. Capitalized Terms not defined herein shall have the meanings as defined in the PPEA, the Guidelines and Design-Builder's Conceptual Phase Proposal.
  - a. "Interim Agreement Price" means the amount that the County will be obligated to pay the Design-Builder as stated at Article 7 of this Agreement.
  - b. "Project" means the design, development and construction of the Sandy River Reservoir Water Treatment and Distribution Project as contemplated by the Proposal. "Project" includes both the entirety of the Project or a part thereof as agreed to by the Parties.
  - c. "Proposal" means Design-Builder's Conceptual Phase Proposal, dated November 22, 2021.
  - d. "Site" means the anticipated location of all facilities, utilities, roads, and other improvements to be designed and constructed as part of the Project, including any necessary ancillary easements or interests in property necessary for such construction.
  - e. "Services" or "IA Services" means the services to be provided by the Design-Builder under this Interim Agreement as described in Exhibit A, Section 1 "Interim Agreement Design and Engineering Services to be performed by Designer for Design-Builder".
3. **Design-Builder's Responsibilities.**
  - a. Design-Builder shall perform all Services set forth in Exhibit A, Section 1 entitled "Interim Agreement Services" (the "Services").
  - b. Design-Builder shall procure and maintain insurance in accordance with Exhibit B.
4. **County's Responsibilities.** The County, as Owner of the Project, shall perform the following functions under this Interim Agreement:
  - a. Procure and maintain insurance in accordance with Exhibit B.
  - b. Furnish any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Project Site.
  - c. Furnish or otherwise make available existing Project-related information and data as is reasonably requested by Design-Builder to enable it to complete its Engineering Services. Such information or data may include the following:
    - i. Zoning, deed, and other land use restrictions;
    - ii. Known and reasonably available existing data prepared by others, including, without limitation, explorations and tests of subsurface conditions at or contiguous to the Site, Drawings of physical conditions in or relating to existing surface or subsurface structures at or

contiguous to the Site, or hydrographic surveys, with appropriate professional interpretation thereof; and

- iii. Known and available existing environmental assessments, audits, investigations, and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas.
- d. Give prompt written notice to Design-Builder whenever Owner observes or otherwise becomes aware of any development that affects the scope or time of performance or furnishing of Design-Builder's services, or any defect or nonconformance in Design-Builder's services.
- e. Furnish, as agreed to by the Parties, other services or provide written authorization to Design-Builder to provide required Services Not Included as set forth in Exhibit A.
- f. Arrange for timely access, including any required advanced written notices, for Design-Builder and Design-Builder's subconsultants to enter upon public and private property as may reasonably be required for Design-Builder to perform services under the Agreement. This does not relieve the Design-Builder of its responsibility for safety with its own activities.
- g. Examine all alternate solutions, studies, reports, sketches, drawings, specifications, proposals, and other documents presented by Design-Builder (including obtaining advice of an attorney, insurance counselor, and other consultants as Owner deems appropriate with respect to such examination) and render in writing any PECEI-requested decisions pertaining thereto within fourteen (14) days or other mutually agreeable time after receipt of the documents to be examined.
- h. Obtain reviews, approvals, agreements, and permits from all governmental authorities having jurisdiction over the Project or from such others as may be necessary for completion of each Phase of the services in this Agreement.
- i. Provide, as required for the Project:
  - i. Accounting, bond, financial advisory, and insurance consultant services as deemed needed by Owner for the Project;
  - ii. Legal services with regard to the Project as needed by Owner, or as Design-Builder reasonably requests and Owner agrees.
- j. Advise Design-Builder of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services with regard to the Project, including, but not limited to, cost estimating, Project peer review, value engineering, and constructability review, when necessary for the Design-Builder to perform its work under this Agreement. Notwithstanding the foregoing, no advice or disclosure of the identity of, or communications with, Owner's counsel shall be required.
- k. Additional Owner responsibilities:
  - i. Coordinate meetings with state and other local government agencies, and potential wholesale customers as needed.
  - ii. Perform all public involvement services.
  - iii. Provide and pay for all third-party reviews of the preliminary design and engineering services as needed by Owner.
  - iv. Costs associated with any hazardous material remediation.
  - v. Costs associated with any railroad agreements or permits.

- vi. Costs associated with obtaining agreement of state agencies or governmental agencies or property owners for access rights or easements.
- vii. Review and approve assumptions and projections for rates, fees, number of users, projected revenue, and cost sharing information to be used in the financial model prior to completion of Study Phase.

5. **Interpretation and Intent.**

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

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

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

--- See next page ---



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

- ii. The Interim Agreement Price includes compensation for Design-Builder's Services and services of Design-Builder's Subcontractors and consultants, if any.
- iii. The portion of the Interim Agreement Price billed each month will be based upon Design-Builder's estimate of the percentage of the total Services completed during the billing period. Each invoice shall include a summary of Work completed and status of the total Work as a validation of estimated Services Completed.
- iv. Design-Builder shall submit to Owner on the fifth (5th) day of each month after execution of this Interim Agreement, Design-Builder's Application for Payment. The Schedule of Values upon which the Applications for Payment will be based shall be submitted to Owner within five (5) days after notice to proceed and shall be in the form and level of detail required by Owner and reasonably acceptable to Design-Builder.
- v. Owner shall make payment, without retainage, within thirty (30) days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with Article 7.b of this Interim Agreement, but in each case less the total of payments previously made.

7. **Schedule.**

- a. The Design-Builder shall complete performance of all Services within 90 days of the execution by both Parties of this Interim Agreement. ("Interim Agreement Schedule" or "Schedule"). The County

and Design-Builder shall use their best efforts to maintain the Interim Agreement Schedule which can be modified by mutual written agreement of the Parties as circumstances warrant.

- b. Owner and Design-Builder agree that the Schedule is a best estimate of the time required for various Services, and may be adjusted, modified and extended as required due to future occurrences and exigencies that are outside of the control of the Owner and/or Design-Builder by agreement of the Parties.
- c. No actual or liquidated damages are assessable against Design-Builder for failure to accomplish the Services to be provided in this Interim Agreement in accordance with the Schedule.

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

- a. The designs, reports, estimates, instruments of service, or any other deliverables, data, or information ("IA Work Product") provided by Design-Builder to Owner pursuant to this Interim Agreement are intended for use in connection with the negotiation of a Comprehensive Agreement between Owner and Design-Builder for the design and construction of the Project. Design-Builder disclaims any and all warranties, express or implied, of the IA Work Product for any use by Owner not in accordance with this limited purpose. Owner hereby releases Design-Builder, its Designer, and all of their subcontractors and consultants, from any liability in connection with the use of by the County of the IA Work Product for any other purpose.
- b. For any claims not included within the foregoing release from liability, to the fullest extent permitted by law, and notwithstanding any other provision of this Interim Agreement, the total liability, in the aggregate, of Design-Builder and Design-Builder's officers, directors, partners, employees, agents, subcontractors, consultants, and any of them, to Owner and anyone claiming by, through, or under Owner, for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Services included in this Agreement, or the Services, from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, or breach of contract or warranty (express or implied) of Design-Builder or Design-Builder's officers, directors, partners, employees, agents, or Subcontractors, or any of them, shall not exceed the greater of: (i) the proceeds of any coverage, net of deductibles or self-insured retention, actually available to the Owner from insurance policies required to be provided by the Design-Builder under this Agreement, or (ii) the total compensation received by Design-Builder under this Agreement.
- c. The limitations on Design-Builder's liability and on damages set forth in this Article A.4 shall have no force and effect if Design-Builder and Owner enter into a Comprehensive Agreement for the design and construction of the Project; in such case the terms of the Comprehensive Agreement shall establish the contractual limitations, if any, on Design-Builder's liability and damages.

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

10. **Negotiation of Comprehensive Agreement.**

- a. If, at the sole election of the County, the County decides to proceed with the Project and enter a Comprehensive Agreement with Design-Builder, the Parties will commence negotiations on the terms of the Comprehensive Agreement at the conclusion of the Study and Report Phase of the Interim Agreement Services.

- b. Under the Comprehensive Agreement, the Design-Builder will design and construct the facilities (“the Work”) and be compensated in the form of a lump sum Price for the Work.
- c. It is the intention of the Parties that the terms of the Comprehensive Agreement will substantially incorporate the terms of the DBIA 525 Owner-Design-Builder Agreement – Lump Sum, and the DBIA 535 General Terms and Conditions, with any amendments and appropriate attachments to be developed and agreed to by the Parties. In addition, the Comprehensive Agreement will substantially incorporate the following additional terms and conditions:
  - i. Design-Builder shall enter the Comprehensive Agreement in its corporate capacity. The County acknowledges the Design-Builder is a Joint Venture of two licensed contractors, each bringing special experience and expertise for the overall benefit of the Project, and further acknowledges Design-Builder's intent to utilize consultants, sub-consultants and other entities identified in the Proposal. Design-Builder shall not substitute another entity for the services to be performed by Timmons Group Inc. (“Designer”) as described in the proposal without the County's prior written approval.
  - ii. Economic Price Adjustment Provisions. In consideration of the volatile markets for certain materials and equipment, the Parties agree to negotiate, as part of the Comprehensive Agreement, appropriate Economic Price Adjustment provisions providing an equitable adjustment to the Contract Price to account for changes in prices for designated materials or equipment between the negotiation of the Comprehensive Agreement and the date of purchase. The list of such materials will be finalized in the Comprehensive Agreement.
  - iii. The costs of all permits shall be paid directly by the Owner.
  - iv. Owner will pay the cost for any utility connections fees to new plant facilities (i.e., Dominion Power, Verizon, etc.)
  - v. Owner will provide all land, and interests in lands (to include easements and rights of way), necessary for construction of the Project.
- d. Design-Builder acknowledges that the County is prohibited by law from undertaking any indemnity obligations to Design-Builder.

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

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

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

- c. Design-Builder's Right to Terminate for Cause. Upon the County's failure to make payments in accordance with the provisions hereof unless the County has notified the Design-Builder of a problem under subparagraph b above, Design-Builder may, upon thirty (30) days written notice, terminate its obligation to provide further services.

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

- a. All Services executed at the time of the notice of termination in connection with the Interim Agreement in accordance with the payment terms of the Interim Agreement.

13. **Standard of Care:** Design-Builder agrees that the standard of care for all professional design services performed under this Interim Agreement shall be the care and skill ordinarily used by members of the design profession in the Commonwealth of Virginia practicing on similar projects at the same time.

14. **Resolution of Disputes, Claims and Other Matters.**

Disputes, claims and other matters in question between the Parties under the Interim Agreement shall only be resolved as follows:

- a. The Parties shall first endeavor to resolve any disputes, claims or other matters in question between them through direct negotiations, and if such direct negotiations fail, by non-binding mediation, with the site of the mediation being the County of Prince Edward, Virginia, which is agreed to be the sole and exclusive venue. Such mediation may be requested by either Party by written request provided to the other Party. Thereafter the Parties shall, by mutual agreement, select a mediator, and such mediation shall be held within sixty (60) days of the written demand.
- b. Should the dispute, claim, or other matter in question remain unresolved for the shorter of (i) a thirty (30) day period following completion of negotiation and a mediation (if requested), or (ii) more than ninety (90) days after mediation is requested by a Party, either Party may proceed in accordance with subparagraph 15(c) below.
- c. If the procedures of subparagraph 15(a) have been followed, but, more than ninety (90) days have passed since a Party has requested mediation, and the dispute, claim or matter in question remains unresolved, then either Party may institute a lawsuit in the Circuit Court of the County of Prince Edward, Virginia, and may pursue all available appeals in Virginia state courts, to the extent they have jurisdiction.
- d. Nothing in paragraphs (a) through (c) shall prevent a Party from seeking temporary injunctive or other temporary equitable relief in the Circuit Court of the County of Prince Edward, Virginia, if circumstances so warrant.
- e. In the event of any dispute, claim, or other matter in question arising, unless terminated by the County, Design-Builder shall continue its performance diligently during its pendency as if no dispute, claim or other matter in question had arisen. Unless Design-Builder has been terminated or suspended, during the pendency of any dispute in connection with the payment of moneys, Design-Builder shall be entitled to receive payments for non-disputed items.

15. **Notices.**

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

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

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

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

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

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

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

21. **Exhibits:** The following Exhibits are attached and made part of the contract:

- A Design-Builder’s Services, Schedule
- B Insurance

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

**COUNTY OF PRINCE EDWARD, VIRGINIA**

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

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

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

ATTEST:

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

Approved as to form:

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

**PRINCE EDWARD COUNTY INFRASTRUCTURE, LLC**

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

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

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

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

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

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

a. Study and Report Phase.

- i. Attend and participate in meetings as requested by Design-Builder and Owner as necessary to facilitate the efficient and timely delivery of the Project.
- ii. Review previously prepared reports and designs by other consultants to confirm Project scope and identify potential conflicts and opportunities to better define and value engineer the Project.
- iii. Consult with the Design-Build team, Owner and Owner’s Consultants to confirm design parameters of proposed infrastructure.

- iv. Coordinate and hold meetings with regulatory agencies that will be required to issue permits prior to the Construction Phase. They include, but are not limited to, the following:
  - (1) Virginia Department of Health Office of Drinking Water (re: Waterworks permitting)
  - (2) Virginia Department of Environmental Quality (re: general discharge permit at water treatment plant, and land disturbance permits)
  - (3) Virginia Department of Transportation (re: land use permit)
  - (4) US Army Corps of Engineers (re: environmental permitting)
  - (5) Prince Edward County (re: site plan requirements and permitting; building permits)
  
- v. Pipelines:
  - (1) Prepare preliminary alignment exhibits to identify potential construction, easement acquisition and permitting challenges.
  - (2) Prepare quantity take-off for Design-Builder's use in preparation of Project Cost Estimate and Recommended Project Budget.
  - (3) Identify environmental resources that could impact Project permitting, cost and schedule.
  
- vi. Water Intake and Pump Station, and Water Treatment Plant:
  - (1) Prepare preliminary exhibits (plan and section) indicating general equipment configuration to include:
    - (a) Raw Water Intake
    - (b) Raw Water Pump Station Wetwell
    - (c) Raw Water Pump Piping and Valve Equipment
    - (d) Raw Water Pump Building and Generator Enclosure
    - (e) Raw Water Pipeline
    - (f) Chemical Addition (Pre-Clarification & Pre-Filtration) & Rapid Mixing
    - (g) Flocculation & Sedimentation Basin(s)
    - (h) Filtration Equipment
    - (i) Chemical Addition (Post-Clarification & Post-Filtration)
    - (j) Disinfection
    - (k) Clearwell On-Site Storage
    - (l) Finished Water Pump Station
    - (m) All Buildings
    - (n) Site Improvements
    - (o) Process Waste Disposal
    - (p) Sanitary Waste Disposal
  - (2) Prepare preliminary calculations for equipment and piping to confirm proof of concept.
  - (3) Consult with vendors to make preliminary equipment selections.
  - (4) Assist Design-Builder in preparation of Project Cost Estimate and Recommended Project Budget.
  
- vii. Topographic Survey.

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

viii. Geotechnical.

- (1) Geotechnical field exploration and laboratory testing will be provided for critical areas of construction and as determined by the Design-Builder.
- (2) A geotechnical engineering report will be provided for the Raw Water Intake, Raw Water Pump Station, Water Treatment Plant, and HDD crossing locations. The report will include the following:
  - (a) Site plan showing borings' locations of the exploration.
  - (b) Description of the exploration sampling methods as well as soil test boring logs.
  - (c) Cross-section figure of borings.
  - (d) Water levels encountered in the borings.
  - (e) Laboratory test results.
  - (f) Recommended foundation type for structures including allowable foundation capacity, embedment, and estimated settlement.
  - (g) General information regarding site preparation including re-use of on-site soils as fill, identification of deleterious soils encountered in the borings, impact of weather and construction equipment on grading, fill compaction recommendations, and preparation of soil subgrades Seismic site classification recommendation in general accordance with the current Virginia Building Code.
  - (h) Borings at both ends of the Horizontal Drill Location.
  - (i) Boring at the Proposed Booster Pump Station.

ix. Environmental.

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



- (d) Wetland Permit Compliance
- (e) Virginia Stormwater Management Compliance

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

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

xi. Administrative.

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

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

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

i. Pipelines:

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

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

- (1) Prepare base construction drawings for use in design to include the following:
    - (a) Topographic survey; planimetric features and contours
    - (b) Property lines
    - (c) Property ownership
    - (d) Underground utilities
    - (e) Environmental resources
    - (f) Existing surface profiles
  - (2) Prepare Preliminary Design drawings for Project components outlined in the Study and Report Phase to include the following:
    - (a) Cover sheet
    - (b) Schedule of drawings (including those anticipated in Final Design)
    - (c) Preliminary Construction details
    - (d) Preliminary Site Layout Plan
    - (e) Preliminary Site Grading Plan
    - (f) Preliminary Stormwater Management Plan
    - (g) Preliminary Mechanical Plan and Sections; prepared in BIM
    - (h) Preliminary Electrical Plan to include a preliminary Electrical Riser Diagram of main equipment components.
  - (3) Prepare detailed design calculations for all treatment process pipes, pumps and equipment.
- iii. Attend and participate in meetings as requested by Design-Builder and Owner as necessary to facilitate the efficient and timely delivery of the Project.
- c. Proposal Development and Comprehensive Agreement Negotiation Phase.
- i. At the conclusion of the Study/Report Phase of Work, as described above, and after receipt of County direction to proceed, the Design-Builder shall provide a proposed Comprehensive Agreement, Design & Construction Schedule, and Lump Sum price to the Owner for the design and construction of the Project.
  - ii. Under the Comprehensive Agreement, the Design-Builder shall provide all design services, and all labor, materials, equipment, subcontracted services, or other requirements outside of the Owner's responsibility for the design and construction of the Project ("the Work"). The Design-Builder shall propose a Lump Sum which shall include the design fee, the cost of the Design Professional's services during Construction, the cost of quality control testing services that fall outside the Owner's responsibility, Construction Project management, the cost of the Work (to include General Conditions and General Requirements), contingency, and the Design-Builder's fee including overhead and profit.
    - (1) Within the Lump Sum proposal, allowances shall be established for certain portions or items of the Work, which by their nature are difficult to accurately estimate at the time of execution of the Comprehensive Agreement. If the costs associated with the Work for which an allowance has been established exceed the allowance agreed within the Lump Sum Price, upon agreement of the Parties, the Design-Builder shall be entitled to an equitable adjustment for the excess costs. If the costs are less than the allowance agreed upon, the Owner shall be entitled to a credit.
    - (2) Additionally, the Lump Sum Proposal may identify Alternate Designs for the Owner's consideration and identify an agreed-to additive price for each Alternate if elected by the Owner.
  - iii. The Design-Builder shall include with the Lump Sum Proposal a written statement of the basis, which shall include:

- (1) A list of Drawings and Specifications and the conditions of the Contract Documents, which were used in preparation of the Lump Sum Proposal.
  - (2) A list of the clarifications and assumptions made by the Design-Builder in the preparation of the Lump Sum proposal to supplement the information contained in the Drawings and Specifications.
  - (3) The proposed Lump Sum as described in this Section 2.a.
  - (4) A detailed schedule for the Comprehensive Agreement Phase of the Project outlining the remaining Design Professional's tasks, permitting allowances, construction activities, start-up and testing, training of the Owner's operational staff, and Project facilities' acceptance and commissioning. The schedule shall identify the Notice to Proceed date upon which the Lump Sum Proposal was based.
  - (5) Pricing used in its calculation of the Lump Sum for designated items of materials or equipment to be subject to an Economic Price Adjustment provision in the Comprehensive Agreement.
- iv. The Design-Builder shall meet with the Owner to review the Lump Sum Proposal and the written statement of its basis. In the event that the Owner discovers any inconsistencies or inaccuracies in the information presented, the Owner shall promptly notify the Design-Builder, who shall make appropriate adjustments to the Lump Sum Proposal, its basis, or both.
- d. Scheduling.
- i. Design Schedule. The Design-Builder shall produce, monitor, and update a design stage schedule in Primavera (P6).
  - ii. Preliminary Construction Schedule. The Design-Builder shall produce a preliminary Construction schedule as part of the Lump Sum Proposal as outlined above.
- e. Construction Planning.
- i. Design-Builder shall provide planning and coordination for subsequent Construction activities as they relate to the preliminary design packages, including potential subcontractor prequalification, vendor/supplier source listings, etc.
- f. Perform constructability reviews and rock investigations to reduce risk and assist in the development of the Lump Sum Price.
2. **Services Not Included in Interim Agreement.**
- a. The following activities are currently not included in the Interim Agreement and are proposed to be addressed in the Comprehensive Agreement:
    - i. Construction Management
    - ii. Preliminary or Final Design (except for that specifically included in this Scope of Services)
    - iii. Design revisions, financial model modifications and participation in meetings and/or negotiations to accommodate changes to serve or not serve potential wholesale partners to be coordinated by the Owner.
    - iv. Submittal of designs to review agencies.
    - v. Purchase of materials.
    - vi. Construction of the Project or portions thereof.
    - vii. Basic Engineering Services during construction
    - viii. Quality Control Testing and Inspections
    - ix. Record Drawings
    - x. Operations & Maintenance Manuals or Training

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

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

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

a. By Design-Builder and Designer:

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

b. By Owner:

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

c. Additional Insureds. The following individuals or entities are to be listed on Owner’s policies of insurance as “additional insureds” as provided in the Interim Agreement:

- i. MEB General Contractors, Inc.
- ii. Faulconer Construction Company, Inc.

Mr. Stanley thanked the review team members both in person and on the Zoom call for being part of the process.

On motion of Supervisor Cooper-Jones, seconded by Supervisor Townsend, and adopted by the following vote:

Aye:	Pattie Cooper-Jones	Nay: None
	J. David Emert	
	Llew W. Gilliam, Jr.	
	Peter Y. Gur	
	Odessa H. Pride	
	Jerry R. Townsend	
	Cannon Watson	
Absent:	Carol R. Stiff	

the meeting was adjourned at 8:57 p.m.