

INTERIM AGREEMENT
BETWEEN
HAMPTON ROADS SANITATION DISTRICT
AND
BURNS & MCDONNELL ENGINEERING COMPANY, INC.

THIS INTERIM AGREEMENT (“Agreement”) is by and between Hampton Roads Sanitation District, a political subdivision of the Commonwealth of Virginia (“HRSD” or “Owner”) and Burns & McDonnell Engineering Company, Inc., a Missouri corporation authorized to do business in the Commonwealth of Virginia (“Private Entity” or “Design-Builder”), each a “Party” and together, the “Parties.”

RECITALS

1. HRSD provides sewer conveyance and treatment services for twenty (20) cities and counties in Southeastern Virginia. Working closely with the U.S. Environmental Protection Agency, Virginia Department of Environmental Quality, and local communities, HRSD has embarked on an extensive program to reduce sanitary sewer overflows in the region. As part of this program, HRSD will be conducting extensive efforts including studies, design, and construction on both HRSD’s sewer system and on the sewer systems owned and operated by the various cities and counties in the region. A critical component of these efforts is HRSD’s High Priority Inflow and Infiltration Reduction Program (the “Program”).

2. Although the design-bid-build project delivery method that utilizes competitive bidding is the default method of procurement for construction in Virginia, this process will not provide the desired outcome for the Program, which requires many complex, interrelated, and geographically diverse projects. Additionally, because the type, location, and amount of construction activities cannot be initially predicted, the Program will require a project delivery team led by an engineering firm that can directly contract with construction firms, as necessary, to complete this work. Consequently, HRSD selected the Public-Private Education Facilities and Infrastructure Act of 2002 (Virginia Code § 56-575.1. *et seq.*) (the “PPEA”) as its method for developing and contracting for the development of the Program.

3. The HRSD Commission (the “Commission”) has adopted guidelines for implementation of the PPEA as Appendix F of the HRSD Procurement Policy and, on February 24, 2024, adopted findings and supplemental guidelines for the solicitation and evaluation of proposals related to the Program under the PPEA (collectively, the “Guidelines”).

4. Consistent with the Guidelines, HRSD solicited proposals through a two-phase Request for Proposals under the PPEA for the Program.

5. In accordance with Virginia Code § 56-575.17(B), and the Guidelines, HRSD held a duly noticed public hearing on May 28, 2024, on the conceptual proposals received for the Program.

6. Following the review and analysis of proposals consistent with the Guidelines, HRSD selected Private Entity for negotiation of an Interim Agreement for preliminary design of the Program.

7. HRSD's approval of Private Entity's Proposal is subject to the Private Entity entering into an interim agreement with the Commission pursuant to Virginia Code § 56-575.9:1 and a subsequent Comprehensive Agreement pursuant to Virginia Code § 56-575.9.

8. Due to the complex, large, phased, and long-term nature of the Program, an interim agreement is necessary to negotiate a fair and reasonable price for the first phase of the Program, the completion, or partial completion, of which is necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases under a Comprehensive Agreement.

9. The Parties have negotiated this Agreement relating to the Program consistent with the PPEA, other applicable law, the Guidelines, Private Entity's proposal, and discussions between representatives of HRSD and Private Entity.

10. The Parties acknowledge and agree that this Agreement will function as the Interim Agreement for purposes of the Project.

11. Having considered this Agreement and other information, Owner has determined that the Project to be designed and constructed pursuant to this Agreement serves the public purpose of the PPEA under the criteria Virginia Code § 56-575.4(C).

12. In accordance with Virginia Code § 56-575.17(C), prior to Commission approval HRSD made the Agreement publicly available in a manner provided in Virginia Code § 56-575.17(A).

13. At its meeting on August 27, 2024, the Commission approved this Agreement and authorized the Chief to execute the Agreement on behalf of HRSD.

14. In connection with its approval of Private Entity's Proposal and this Agreement, HRSD shall establish a date for the commencement of activities related to the Project, which may be extended by HRSD from time to time.

NOW, THEREFORE, in consideration of the Recitals set forth above, which are incorporated herein, and good and valuable consideration as set forth below, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

PROJECT INFORMATION

Interim Agreement: High Priority Inflow and Infiltration Reduction Program (GN020300) (Program)

Engineer: Private Entity shall be the Engineer and shall directly perform the Design Professional Services, as well as subcontract with other Project Design Professionals through Design Agreements for performance of some Design Professional Services related to the Project.

Authorized Representatives: Owner and Private Entity each hereby designates a specific individual authorized to act as representative with respect to the performance of responsibilities under this Interim Agreement. Such an individual shall have authority to transmit instructions, receive formal notices, receive information, and render decisions relative to this Interim Agreement on

behalf of the respective party that the individual represents.

1. Owner's Authorized Representative:
Bruce Husselbee, Chief Engineer
1434 Air Rail Avenue,
Virginia Beach, Virginia 23455
(757) 460-7012
bhusselbee@hrsdc.com
2. Private Entity's Authorized Representative:
John J. Pruss, PE ENV SP
Director of Program Management, Water
Burns & McDonnell
Direct: 816-627-4772
jjpruss@burnsmcd.com

Terms used in this Agreement have the meanings stated herein and in the General Conditions and the Supplementary Conditions.

ARTICLE 1 – THE WORK

1.01 *General Description of Interim Agreement Work*

Under this Agreement and consistent with Article 6, Private Entity shall provide Design Professional Services and other support services necessary to plan and conceptually design the Project, consisting of multiple sanitary sewer rehabilitation and replacement projects within gravity sanitary sewer systems, and related remediation consistent with the Program and the Contract Documents. The goal of this Program and the Project is to reduce capacity-related sanitary sewer overflows within the pre-selected Locality catchments through the cost-effective reduction of inflow and infiltration.

The Parties understand and agree that Design Professional Services, including detailed engineering, and Construction will be performed utilizing a design/build delivery method governed by a Comprehensive Agreement to be negotiated by the Parties during the term of this Agreement.

ARTICLE 2 – CONTRACT TIMES

2.01 *Time is of the Essence*

All time limits for Private Entity's attainment of Milestones for Design Submittals necessary for Construction, if any, are of the essence of the Contract.

2.02 *Contract Times*

Private Entity will complete the Scope of Work within 180 days after the Effective Date.

2.03 *Liquidated Damages (applicable to the subsequent Comprehensive Agreement)*

- A. Private Entity and Owner recognize that time is of the essence as stated in Paragraph 2.01 above, and that Owner will suffer financial and other losses if the Work is not completed prior to December 31, 2030, plus any extensions thereof allowed in accordance with the Comprehensive Agreement, and Milestones, if applicable, are not achieved within the times specified, plus any extensions thereof allowed in accordance with the Comprehensive Agreement. The Parties also recognize the delays, expense, and difficulties involved in proving in a lawsuit the actual loss suffered by Owner if the Work and Milestones, if applicable, are not completed on time. Accordingly, instead of requiring any such proof, Owner and Private Entity agree that as liquidated damages for delay (but not as a penalty):
1. *Completion*: Private Entity shall pay Owner liquidated damages in an amount to be further defined and agreed to in the Comprehensive Agreement for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in the Comprehensive Agreement for completion of the Work and Milestones, if applicable. The Parties may establish separate liquidated damages amounts for separate failures to timely achieve certain Milestones or establish a uniform liquidated damages amount per day or both, such determinations to be made at the time of and memorialized in the Comprehensive Agreement.

2.04 *Consequential or Special Damages (applicable to the subsequent Comprehensive Agreement)*

- A. Private Entity shall reimburse Owner (1) as special damages, for any fines or penalties imposed on Owner as a direct result of the Private Entity's failure to attain Substantial Completion or the Project being Functionally Complete according to the Contract Times in the Comprehensive Agreement ("Special Damages"), and (2) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in the Comprehensive Agreement for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete ("Consequential Damages"). The total amount for Special Damages and Consequential Damages shall not exceed an amount or percentage of the Contract Price and all approved Contract Price modifications, such amount to be determined in the Comprehensive Agreement.
- B. After Private Entity achieves Substantial Completion, if Private Entity shall neglect, refuse, or fail to complete the remaining Work within the Contract Times established in the Comprehensive Agreement, Private Entity shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in the Comprehensive Agreement for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment ("Final Consequential Damages").
- C. The Special Damages, Consequential Damages, and Final Consequential Damages imposed in this Paragraph are supplemental to any liquidated damages for delayed completion established in this Agreement.

- D. The Parties understand and agree that the provisions of Paragraph 2.03 and this Paragraph 2.04 shall be included in any Comprehensive Agreement executed by the Parties for the Project.

2.05 *Limitation on Liability*

Except as expressly provided for in the Interim or Comprehensive Agreement, Private Entity will have no liability for any special, indirect, punitive, liquidated, or consequential damages.

In consideration for the mutually negotiated pricing and payment provisions, and terms and conditions contained in this agreement, the total aggregate liability of Design-Builder, its officers, directors, shareholders, employees, agents, subcontractors and suppliers, and any of them to Owner and Owner's personnel, and anyone claiming by, through or under Owner or Owner's personnel, for any and all claims losses, liability, costs, expenses, or damages whatsoever arising out of, resulting from, or in any way related to the Work or this Agreement shall not exceed the contract price paid to Design-Builder.

Notwithstanding anything to the contrary in this Agreement, all limitations of liability specifically expressed in this Agreement shall apply to all claims, causes of actions, theories of recovery, and demands at law, equity, or otherwise, including but not limited to breach of contract, breach of warranty, strict liability, products liability, and negligence of any degree. Such limitations and waivers shall not apply to Private Entity's indemnity obligations under this Agreement for third-party property damage, bodily injury, or death, nor to either Party's fraud or willful misconduct.

ARTICLE 3 – CONTRACT PRICE

3.01 *Contract Price*

- A. Owner shall pay Private Entity for completion of the portion of the Work subject to this Agreement in accordance with the Contract Documents identified in Article 6 the amounts that follow, subject to adjustment under the Contract:
1. Planning and Conceptual Design Professional Services: an amount based on time and material rates set forth in Exhibit A – Scope of Services. Any not-to-exceed amount is a budgetary estimate and not a maximum amount of compensation to be paid to Private Entity for the Work. To extent that Design-Builder anticipates that the Planning and Conceptual Design Professional Services shall exceed the budgetary estimate and prior to such time that it is exceeded, Design-Builder shall contact Owner to discuss whether a revised Scope of Work should be implemented or whether the Contract Price should be increased, or both.

ARTICLE 4 – PAYMENT PROCEDURES

4.01 *Submittal and Processing of Payments*

- A. Private Entity shall submit Applications for Payment in accordance with Article 14 of the General Conditions and Supplementary Conditions. Owner will process Applications for Payment as provided in the General Conditions and Supplementary Conditions.

4.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on account of the Contract Price on the basis of Private Entity's Applications for Payment monthly during performance of the Work as provided in Paragraph 4.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of this Interim Agreement. All such payments will be measured by any Schedule of Values established as provided in the General Conditions and Supplementary Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided in Paragraphs 3.01.A.1 and 6.01.A.5 and elsewhere in this Interim Agreement.
 - 1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with this Interim Agreement.
 - a. 95 percent of Work completed (with the balance being retainage); and
 - b. 95 percent of cost of materials and equipment not incorporated in the Work but delivered, suitably stored, and accompanied by documentation satisfactory to Owner as provided in Paragraph 14.01.B of the General Conditions (with the balance being retainage).
- B. Upon Substantial Completion, the retainage shall be further reduced below 5 percent to that amount necessary to assure Final Completion, as determined by the Owner. The determination of any such reduction shall be at the sole discretion of the Owner.
- C. Notwithstanding the provisions above, no retainage shall be withheld with respect to this Agreement or the portion of a payment application pertaining to engineering, design, and other professional services in the Comprehensive Agreement.

4.03 *Diversity Procurement*

- A. The Private Entity, Project Design Professionals, Construction Subcontractors, and Suppliers are encouraged to provide the participation of small, women-owned, and minority-owned (SWaM) businesses, service-disabled veteran-owned businesses (SDVOB), or disadvantaged business enterprises (DBE) in this Agreement. With each monthly Application for Payment, the Private Entity shall document the following:
 - 1. if the Private Entity is designated by the Commonwealth of Virginia as a SWaM, SDVOB, and/or DBE, the designation type and the dollar value of Work completed by the Private Entity,
 - 2. dollar value of Work completed by Project Design Professionals, Construction Subcontractors, and/or Suppliers designated by the Commonwealth of Virginia as small businesses,

3. dollar value of Work completed by Project Design Professionals, Construction Subcontractors, and/or Suppliers designated by the Commonwealth of Virginia as women-owned businesses,
4. dollar value of Work completed by Project Design Professionals, Construction Subcontractors, and/or Suppliers designated by the Commonwealth of Virginia as minority-owned businesses,
5. dollar value of Work completed by Project Design Professionals, Construction Subcontractors, and/or Suppliers designated by the Commonwealth of Virginia as SDVOB, and
6. dollar value of Work completed by Project Design Professionals, Construction Subcontractors, and/or Suppliers designated by the Commonwealth of Virginia as DBE.

4.04 *Construction Subcontractor and Supplier Payments*

A. In accordance with Virginia Code § 2.2-4354 :

1. Private Entity is liable for the entire amount owed to any Construction Subcontractor or Supplier with which it contracts. Private Entity shall not be liable for amounts otherwise reducible due to the Construction Subcontractor's or Supplier's noncompliance with the terms of the contract. In the event that the Private Entity withholds all or a part of the amount promised to the Construction Subcontractor or Supplier under the contract, the Private Entity shall notify the Owner and Construction Subcontractor or Supplier in writing of their intention to withhold all or a part of the Construction Subcontractor's or Supplier's payment with the reason for nonpayment. Payment by the Construction Subcontractor or Supplier contracting with the Private Entity shall not be a condition precedent to payment to any lower-tier Construction Subcontractor or Supplier, regardless of the Private Entity receiving payment for amounts owed to the Private Entity. Any provision in a contract contrary to this Section 4.04 shall be unenforceable.
2. Within 7 calendar days of each payment by Owner to Private Entity under this Agreement, Private Entity shall either:
 - a. pay the Construction Subcontractor or Supplier for the proportionate share of the total payment received from the Owner attributable to the Work performed by the Construction Subcontractor or Supplier; or
 - b. notify the Owner and Construction Subcontractor or Supplier in writing of the intention to withhold all or part of the Construction Subcontractor's or Supplier's payment with the reason for nonpayment.
3. Private Entity shall pay interest to its Construction Subcontractor or Supplier on all amounts owed by the Private Entity that remain unpaid after 7 calendar days following receipt by the Private Entity of payment from Owner for Work performed by the Subcontractor or Supplier, except for amounts withheld as allowed in this Paragraph 2.

4. Unless otherwise provided under the terms of this Agreement, interest shall accrue at the rate of 1 percent per month.
 - a. Private Entity shall include in each of its subcontracts a provision requiring each Construction Subcontractor or Supplier to include or otherwise be subject to the same payment and interest requirements set forth in this Paragraph.
 - b. A subcontract modification shall not be made for the purpose of providing reimbursement for the interest charges. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

4.05 *Final Payment*

- A. Upon Final Completion and acceptance of the Work in accordance with Paragraph 14.06 of the General Conditions, Owner shall pay the remainder of the Contract Price.

4.06 *Consent of Surety*

- A. Owner may withhold final payment or return or release retainage at Substantial Completion or any other time, unless Private Entity submits written consent of the surety to such payment, return or release.

ARTICLE 5 – REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS

5.01 *Private Entity's Representations*

- A. To induce Owner to enter into this Contract, Private Entity makes the following representations with respect to the portion of the Work to be performed under this Agreement:
 1. Private Entity has provided its social security number or federal employer identification number in Owner's Online Oracle Enterprise Resource Planning (ERP) system.
 2. Private Entity has examined and carefully studied the Contract Documents, any data, and reference items identified in the Contract Documents.
 3. Private Entity has become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the portion of the Work subject to this Agreement.
 4. Private Entity is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
 5. Private Entity has carefully studied the reports, if any, of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings, if any, of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Contract Documents, with respect to the Technical Data in such reports and drawings.

6. Private Entity has carefully studied the reports and drawings, if any, relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Contract Documents, with respect to Technical Data in such reports and drawings.
7. Private Entity has considered the information known to Private Entity itself, and to Construction Subcontractors and Project Design Professionals that Private Entity has selected as of the Effective Date; information commonly known to design professionals, Private Entities, and contractors doing business in the locality of the Site; the Contract Documents; and the Site-related reports and drawings, if any, identified in the Contract Documents or otherwise made available to Private Entity, with respect to the effect of such information, observations, and documents on (a) the cost, progress, and performance of the portion of the Work subject to this Agreement; and (b) Private Entity's safety precautions and programs.
8. Intentionally Omitted.
9. Private Entity is aware of the general nature of work to be performed by Owner and others at the Site that relates to the portion of the Work subject to this Agreement as indicated in the Contract Documents.
10. Private Entity has submitted online discussion(s) through Owner's Online Oracle ERP system as written notice of all conflicts, errors, ambiguities, or discrepancies that Private Entity has discovered in the Contract Documents and of discrepancies between Site conditions and the Contract Documents and confirms that the written resolution by Owner is acceptable to Private Entity.
11. Private Entity has determined that the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance and furnishing of the portion of the Work subject to this Agreement.
12. Private Entity's entry into this Contract constitutes an incontrovertible representation by Private Entity that without exception all prices in the Agreement are premised upon performing and furnishing the portion of the Work subject to this Agreement as required by the Contract Documents.
13. Private Entity is organized or authorized to transact business in the Commonwealth of Virginia in accordance with Virginia Code Title 13.1 and/or Title 50 . Private Entity shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth of Virginia, if so, required under Virginia Code Title 13.1 and/or Title 50, to be revoked or cancelled at any time during the term of this Agreement. If the Private Entity fails to remain in compliance with the provisions of this section, Owner reserves the right to cancel this Agreement.
14. Private Entity does not, and shall not during the performance of the contract, knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986, in accordance with Virginia Code § 2.2-4311.1.

5.02 *Private Entity's Certifications*

- A. Private Entity certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Private Entity Contract. For the purposes of this Paragraph:
1. "Corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the Proposal process or in the Design-Build Contract execution.
 2. "Fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the Proposal process or the execution of the Design-Build Contract to the detriment of Owner, (b) to establish Proposal or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition.
 3. "Collusive practice" means a scheme or arrangement between 2 or more Proposers, with or without the knowledge of Owner, a purpose of which is to establish Proposal or Contract prices at artificial, non-competitive levels.
 4. "Coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the Proposal process or affect execution of the Design-Build Contract.

5.03 *Anti-Discrimination Requirements*

- A. For all contracts over \$10,000 the Private Entity shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability or other basis prohibited by state law relating to discrimination in employment. During the performance of this Agreement, the Private Entity shall:
1. post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause,
 2. in all solicitations or advertisements for employees placed by or on behalf of the Private Entity, will state that such Private Entity is an equal opportunity employer. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section, and
 3. include the provisions of the foregoing clauses in every Construction Subcontract or purchase order over \$10,000, so that the provisions will be binding upon each Construction Subcontractor or Supplier, all in accordance with Virginia Code § 2.2-4311.
- B. Further, in accordance with Virginia Code § 2.2-4343.1, the Private Entity shall not discriminate against a faith-based organization on the basis of the organization's religious character or impose conditions that restrict the religious character of the faith-based organization, except in accordance with Virginia Code § 2.2-4343.1.F, that no funds shall be expended on contracts for religious worship, instruction, or proselytizing, or impair, diminish,

or discourage the exercise of religious freedom by the recipients of such goods, services, or disbursements.

- C. In accordance with the Virginia Human Rights Act, Virginia Code § 2.2-3900, the Private Entity shall safeguard all individuals within the Commonwealth from unlawful discrimination in employment because of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, sexual orientation, gender identity, disability, or status as a veteran; preserve the public safety, health, and general welfare; further the interests, rights, and privileges of individuals within the Commonwealth; and protect citizens of the Commonwealth against unfounded charges of unlawful discrimination.

5.04 *Drug Free Workplace Requirements*

- A. For all contracts over \$10,000 the Private Entity shall maintain a drug-free workplace. During the performance of this Agreement, the Private Entity shall:
 - 1. provide a drug-free workplace for the Private Entity's employees,
 - 2. post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Private Entity's workplace and specifying the actions that will be taken against employees for violations of such prohibition,
 - 3. state in all solicitations or advertisements for employees placed by or on behalf of the Private Entity that the Private Entity maintains a drug-free workplace, and
 - 4. include the provisions of the foregoing clauses in every Construction Subcontract or purchase order over \$10,000, so that the provisions will be binding upon each Construction Subcontractor or Supplier, all in accordance with Virginia Code § 2.2-4312.

ARTICLE 6 – CONTRACT DOCUMENTS

6.01 *Contents*

- A. The Contract Documents consist of the following:
 - 1. This Agreement (inclusive).
 - 2. General Conditions as applicable to the Scope of Work (inclusive; not attached but incorporated by reference).
 - 3. Supplementary Conditions as applicable to the Scope of Work (inclusive; not attached but incorporated by reference).
 - 4. Not used
 - 5. Exhibits to this Agreement (enumerated as follows):

- a. Scope of the Design Professional Services (Interim Agreement) (“Scope of Work”).
 - b. Not used.
 - c. Conceptual Documents as identified in RFP Article 4.01 (inclusive, not attached but incorporated by reference), being:
 - 1. Location of High Priority Inflow and Infiltration Program Work
 - 2. Regional Wet Weather Management Plan dated June 2020 (https://www.hrsd.com/sites/default/files/assets/Documents/pdfs/EP_A/FINALRWWMPasAPPROVED_1-26-22.pdf)
 - 3. RWWMP Improvements Framework dated October 2018
 - 4. Alternatives Analysis Report dated July 29, 2016
 - 5. Locality Memorandum of Agreement dated March 10, 2014
 - d. Private Entity’s time and material rates
6. The following which may be delivered or issued on or after the Effective Date of this Agreement and are not attached hereto:
- a. Notice to Proceed.
 - b. Performance Bond (not required prior to execution of Comprehensive Agreement) (together with power of attorney; See Supplementary Conditions Paragraph 6.01).
 - c. Payment Bond (not required prior to execution of Comprehensive Agreement) (together with power of attorney).
 - d. Insurance Certificates.
 - e. Escrow Agreement (if applicable).
 - f. Work Change Directives (if applicable).
 - g. Change Orders (if applicable).
- B. The Contract Documents listed in Paragraph 6.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 6.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.
- E. The General Conditions and Supplementary Conditions are not intended to modify Contractor’s Scope of Work for the Interim Agreement as set forth in Exhibit A.

ARTICLE 7 – TERMINATION PROVISIONS

7.01 Termination of Agreement

- A. Suspension of Work or termination of the Agreement shall be in accordance with Article 15 of the General Conditions.
- B. Execution of this Agreement and the performance of any services provided hereunder shall not require or bind the Owner to retain the Private Entity for the construction phase of the Project. Final negotiations and execution of a Comprehensive Agreement, and amendments as applicable, will occur at a time when the conceptual plan scope of work and budgetary cost of the construction effort for the Work can be more accurately defined. If a scope of work and compensation for the construction-related activities cannot be successfully negotiated, the Owner reserves the right to terminate this Agreement for convenience in accordance with Section 15.03 of the General Conditions and compensate the Private Entity to complete the design-related efforts associated with this Project and use the Record Specifications and Record Drawings to bid and construct the needed improvements associated with the Project. The Owner will then have the right to use the documents as defined in Paragraph 3.04 of the General Conditions and as further modified in the Supplementary Conditions. In negotiating the cost to complete the design-related efforts, the Private Entity and the Owner each hereby commits to negotiate a reasonable price in relation to the cost of the services provided. The Owner may, in its sole discretion, elect to cancel the Project and compensate the Private Entity for design related services completed and other termination expenses as provided for in Section 15.03 of the General Conditions.

ARTICLE 8 – MISCELLANEOUS

- 8.01 *Assignment of Agreement: Unless expressly agreed to elsewhere in the Agreement, no assignment by a party hereto of any rights under or interests in the Agreement will be binding on the other party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and 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 the Agreement.*
- 8.02 *Successors and Assigns: Owner and Private Entity each binds itself, its successors, assigns, and legal representatives to the other party hereto, and its successors, assigns, and legal representatives, in respect to all covenants, agreements, and obligations contained in the Agreement.*
- 8.03 *Severability: Any provision or part of the Agreement held to be void or unenforceable under any applicable law or regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Private Entity, who 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.*
- 8.04 *Permission to Use HRSD Name and Social Media Release: The Private Entity or any of its employees or agents shall not use HRSD's name, logo, proprietary information, or site photographs in any format for any personal or professional marketing or public relations material or social media use without prior review and approval from the Owner. These materials include, but are not limited to, advertisements, news releases, published articles, customer lists, social media posts,*

advertorials or any other promotional purposes. Owner's Director of Communications shall be provided with any material to be shared with the public at least 7 business days prior to the planned release of the information.

This Agreement will be effective on the date it is signed by the last signatory required below.

The Agreement and all subsequent changes to the Agreement will be approved and executed using Owner's Enterprise Project Management (Unifier) system. Physical signatures (on the Agreement and future Change Orders) will not be required if acknowledged by Private Entity through the online system.

Hampton Roads Sanitation District

Burns & McDonnell Engineering Company, Inc.

Signature

Signature

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____