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# **STANDARD FORM OF AGREEMENT BETWEEN OWNER AND DESIGN- BUILDER - LUMP SUM**

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**Document No. 525 (With modifications negotiated by the Parties)**

Second Edition, 2010

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Washington, DC

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# Standard Form of Agreement Between Owner and Design-Builder - Lump Sum

(With modifications negotiated by the Parties)

*This document has important legal consequences. Consultation with  
an attorney is recommended with respect to its completion or modification.*

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This **AGREEMENT** is made as of the 13 day of June in the year of 2014 by and between the following parties, for services in connection with the Project identified below.

**OWNER:**

*(Name and address)*

City of Hopewell, Virginia  
300 N. Main Street  
Hopewell, VA 23860

**DESIGN-BUILDER:**

*(Name and address)*

Hopewell Nutrient Partners, A Joint Venture  
4435 Main Street, Suite 1000  
Kansas City, MO 64111

**PROJECT:**

*(Include Project name and location as it will appear in the Contract Documents)*

City of Hopewell, Hopewell Regional Wastewater Treatment Facility, Alternative 4A-1 Light, Phase 2 Project

In consideration of the mutual covenants and obligations contained herein, Owner and Design-Builder agree as set forth herein.

## **Article 1**

### **Scope of Work**

**1.1** Design-Builder shall perform all design and construction services, and provide all material, equipment, tools and labor, necessary to complete the Work described in and reasonably inferable from the Contract Documents.

## **Article 2**

### **Contract Documents**

**2.1** The Contract Documents are comprised of the following:

**2.1.1** All written modifications, amendments, minor changes and Change Orders to this Agreement issued in accordance with DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2010 Edition) ("General Conditions of Contract");

**2.1.2** The Basis of Design Documents, including the Owner's Project Criteria, Design-Builder's Proposal and the Deviation List, if any, contained in the Design-Builder's Proposal, which shall specifically identify any and all deviations from Owner's Project Criteria (Exhibit A, Scope of Work and Basis of Design);

**2.1.3** This Agreement, including all exhibits and attachments, executed by Owner and Design-Builder

Exhibit B, Schedule

Exhibit C, Contract Price

Exhibit D, Insurance;

**2.1.4** The General Conditions of Contract; and

**2.1.5** Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions of Contract.

## **Article 3**

### **Interpretation and Intent**

**3.1** Design-Builder and Owner, prior to execution of the Agreement, shall carefully review all the Contract Documents, including the various documents comprising the Basis of Design Documents, for any conflicts or ambiguities. Design-Builder and Owner will discuss and resolve any identified conflicts or ambiguities prior to execution of the Agreement.

**3.2** The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after

execution of the Agreement, Design-Builder and Owner shall attempt to resolve any ambiguity, conflict or inconsistency informally, recognizing that the Contract Documents shall take precedence in the order in which they are listed in Section 2.1 hereof. Conflicts existing within Section 2.1.2 shall be resolved by giving precedence first to the Deviation List, if any, then the Owner's Project Criteria, and then the Design-Builder's Proposal.

**3.3** Terms, words and phrases used in the Contract Documents, including this Agreement, shall have the meanings given them in the General Conditions of Contract.

**3.4** If Owner's Project Criteria contain design specifications: (a) Design-Builder shall be entitled to reasonably rely on the accuracy of the information represented in such design specifications and their compatibility with other information set forth in Owner's Project Criteria, including any performance specifications; and (b) Design-Builder shall be entitled to an adjustment in the Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by such inaccurate design specification.

**3.5** The Contract Documents form the entire agreement between Owner and Design-Builder and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

## **Article 4**

### **Ownership of Work Product**

**4.1 Work Product.** All drawings, specifications and other documents and electronic data, including such documents identified in the General Conditions of Contract, furnished by Design-Builder to Owner under this Agreement ("Work Product") are deemed to be instruments of service and Design-Builder shall retain the ownership and property interests therein, including but not limited to any intellectual property rights, copyrights and/or patents, subject to the provisions set forth in Sections 4.2 through 4.5 below.

**4.2 Owner's Limited License Upon Project Completion and Payment in Full to Design-Builder.** Upon Owner's payment in full for all Work performed under the Contract Documents, Design-Builder shall grant Owner a limited license to use the Work Product in connection with Owner's occupancy of the Project, conditioned on Owner's express understanding that its alteration of the Work Product without the involvement of Design-Builder is at Owner's sole risk and without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier (collectively the "Indemnified Parties"), and on the Owner's obligation to provide the indemnity set forth in Section 4.5 below.

**4.3 Owner's Limited License upon Owner's Termination for Convenience or Design-Builder's Election to Terminate.** If Owner terminates this Agreement for its convenience as set forth in Article 8 hereof, or if Design-Builder elects to terminate this Agreement in accordance with Section 11.4 of the General Conditions of Contract, Design-Builder shall, upon Owner's payment in full of the amounts due Design-Builder under the Contract Documents, grant Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights as set forth in Section 4.2 above, conditioned on the following:

**4.3.1** Use of the Work Product is at Owner's sole risk without liability or legal exposure to any Indemnified Party and on the Owner's obligation to provide the indemnity set forth in Section 4.5 below; and

**4.3.2** Owner agrees to pay Design-Builder the additional sum of Ten Dollars (\$ 10.00) as compensation for the right to use the Work Product to complete the Project and subsequently use the work Product in accordance with Section 4.2 if Owner resumes the Project through its employees, agents, or third parties.

**4.4 Owner's Limited License upon Design-Builder's Default.** If this Agreement is terminated due to Design-Builder's default pursuant to Section 11.2 of the General Conditions of Contract, then Design-Builder grants Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights and obligations as set forth in Section 4.2 above. Notwithstanding the preceding sentence, if it is ultimately determined that Design-Builder was not in default, Owner shall be deemed to have terminated the Agreement for convenience, and Design-Builder shall be entitled to the rights and remedies set forth in Section 4.3 above.

**4.5 Owner's Indemnification for Use of Work Product.** If Owner is required to indemnify any Indemnified Parties based on the use or alteration of the Work Product under any of the circumstances identified in this Article 4, Owner shall, to the extent permitted by law, defend, indemnify and hold harmless such Indemnified Parties from and against any and all claims, damages, liabilities, losses and expenses, including attorneys' fees, arising out of or resulting from the use or alteration of the Work Product.

## **Article 5**

### **Contract Time**

**5.1 Date of Commencement.** The Work shall commence within five (5) days of Design-Builder's receipt of Owner's Notice to Proceed ("Date of Commencement") unless the parties mutually agree otherwise in writing.

**5.2 Substantial Completion and Final Completion.**

**5.2.1** Substantial Completion of the entire Work shall be achieved no later than Nine Hundred and Thirty (930) calendar days after the Date of Commencement ("Scheduled Substantial Completion Date").

**5.2.2** (Reserved.)

**5.2.3** Final Completion of the Work or identified portions of the Work shall be achieved as expeditiously as reasonably practicable. Final Completion is the date when all Work is complete pursuant to the definition of Final Completion set forth in Section 1.2.7 of the General Conditions of Contract.

**5.2.4** All of the dates set forth in this Article 5 and Schedule Exhibit B (collectively the "Contract Time(s)") shall be subject to adjustment in accordance with the General Conditions of Contract.

**5.3 Time is of the Essence.** Owner and Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

**5.4** (Reserved.)

**5.4** Design-Builder and Owner have agreed not to provide for liquidated damages in this Agreement for failure of Design-Builder to achieve the Contract Time(s) set forth in this Article 5. Design-Builder understands, however, that Owner may suffer actual damages due to Owner's need to purchase nitrogen credits for Commitment Year 2018 in the event the Contract Time(s) set forth herein are not timely achieved. Owner shall be able to recover such actual damages from Design-Builder to the extent it can demonstrate that actual

damages have been incurred, are directly related and caused by Design-Builder's failure to meet the Contract Time(s) set forth herein, and are not waived by Section 10.5.1 of the General Conditions of Contract. Notwithstanding the foregoing, in no event shall Design-Builder's liability for actual damages for delays exceed Seventeen Thousand Sixty Five Dollars and Fourteen Cents (\$17,065.14) per day or Six Hundred Forty Four Thousand Two Hundred Seventy Five Dollars and Ninety Four Cents (\$644,275.94) in total.

**5.5** (Reserved.)

**5.6** (Reserved.)

**5.7** In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 of the General Conditions of Contract, Design-Builder shall also be entitled to an appropriate adjustment of the Contract Price for those events set forth in Section 8.2.1 of the General Conditions of Contract, provided, however, for Force Majeure Events, Design-Builder shall only be entitled to an increase in the Contract Price if said events exceed 10 cumulative days. Said additional compensation shall be limited to the direct costs and expenses Design-Builder can demonstrate it has reasonably and actually incurred as a result of such event.

## **Article 6**

### **Contract Price**

**6.1 Contract Price.** Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract the sum of Seventy Million Four Hundred Ten Thousand Five Hundred Ninety Nine Dollars (\$70,410,599) ("Contract Price"), subject to adjustments made in accordance with the General Conditions of Contract. Unless otherwise provided in the Contract Documents, the Contract Price is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

**6.2 Markups for Changes.** If the Contract Price requires an adjustment due to changes in the Work, and the cost of such changes is determined under Sections 9.4.1.3 or 9.4.1.4 of the General Conditions of Contract, the following markups shall be allowed on such changes:

**6.2.1** For additive Change Orders, including additive Change Orders arising from both additive and deductive items, it is agreed that Design-Builder shall receive a Fee of twelve percent (12%) of the additional costs incurred for that Change Order, plus any other markups set forth at Exhibit C hereto.

### **6.3 Allowance Items and Allowance Values.**

**6.3.1** Any and all Allowance Items, as well as their corresponding Allowance Values, if any, are set forth in Exhibit C.

**6.3.2** Design-Builder and Owner have worked together to review the Allowance Items and Allowance Values based on design information then available to determine that the Allowance Values constitute reasonable estimates for the Allowance Items. Design-Builder and Owner will continue working closely together during the preparation of the design to develop Construction Documents consistent with the Allowance Values. Nothing herein is intended in any way to constitute a guarantee by Design-Builder that the Allowance Item in question can be performed for the Allowance Value.

**6.3.3** No work shall be performed on any Allowance Item without Design-Builder first obtaining in writing advanced authorization to proceed from Owner. Owner agrees that if Design-Builder is not provided written authorization to proceed on an Allowance Item by the date set forth in the Project schedule, due to no fault of Design-Builder, Design-Builder may be entitled to an adjustment of the Contract Time(s) and Contract Price.

**6.3.4** In the event the actual direct cost of labor, materials, equipment, transportation, taxes and insurance associated with an Allowance Item is five percent (5%) greater than or less than the Allowance Value for such Allowance Item, Design-Builder and Owner agree that Design-Builder's right to Fee and markup shall be adjusted in accordance with Section 6.2.

**6.3.5** Whenever the actual costs for an Allowance Item is more than or less than the stated Allowance Value, the Contract Price shall be adjusted accordingly by Change Order, subject to Section 6.3.4. The amount of the Change Order shall reflect the difference between actual costs incurred by Design-Builder for the particular Allowance Item and the Allowance Value.

## **Article 7**

### **Procedure for Payment**

#### **7.1 Progress Payments.**

**7.1.1** Design-Builder shall submit to Owner on the tenth (10th) day of each month, beginning with the first month after the Date of Commencement, Design-Builder's Application for Payment in accordance with Article 6 of the General Conditions of Contract.

**7.1.2** Owner shall make payment within thirty (30) days after Design Builder's submittal and accurate Application for Payment in accordance with Article 6 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions of Contract.

#### **7.2 Retainage on Progress Payments.**

**7.2.1** Owner will retain five percent (5%) from Design-Builder's Applications for Payment, exclusive of general conditions costs and any amounts paid to Design-Builder's Design Consultant, from each Application for Payment provided, however, that when fifty percent (50%) of the Work has been satisfactorily completed by Design-Builder and Design-Builder is otherwise in compliance with its contractual obligations, Owner will not retain any additional amounts from Design-Builder's subsequent Applications for Payment. Owner will also reasonably consider reducing retainage for Subcontractors completing their work early in the Project.

**7.2.2** Within fifteen (15) days after Substantial Completion of the entire Work or, if applicable, any portion of the Work, pursuant to Section 6.6 of the General Conditions of Contract, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to (a) the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion and (b) all other amounts Owner is entitled to withhold pursuant to Section 6.3 of the General Conditions of Contract.

**7.3 Final Payment.** Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.7 of the General Conditions of Contract. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment within thirty (30) days after Owner's receipt of the Final Application for Payment, provided that Design-Builder has satisfied the requirements for final payment set forth in Section 6.7.2 of the General Conditions of Contract.

**7.4 Interest.** Payments due and unpaid by Owner to Design-Builder, whether progress payments or final payment, shall bear interest commencing five (5) days after payment is due at the rate of one and one half percent (1.5%) per month until paid.



**7.5 Record Keeping and Finance Controls.** With respect to changes in the Work performed on a cost basis by Design-Builder pursuant to the Contract Documents, Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of three (3) years after Final Payment, Owner and Owner's accountants shall be afforded access to, and the right to audit from time-to-time, upon reasonable notice, Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to changes in the Work performed on a cost basis in accordance with the Contract Documents, all of which Design-Builder shall preserve for a period of three (3) years after Final Payment. Such inspection shall take place at Design-Builder's offices during normal business hours unless another location and time is agreed to by the parties. Any multipliers or markups agreed to by the Owner and Design-Builder as part of this Agreement are only subject to audit to confirm that such multiplier or markup has been charged in accordance with this Agreement, with the composition of such multiplier or markup not being subject to audit.

## **Article 8**

### **Termination for Convenience**

**8.1** Upon ten (10) days' written notice to Design-Builder, Owner may, for its convenience and without cause, elect to terminate this Agreement. In such event, Owner shall pay Design-Builder for the following:

**8.1.1** All Work executed and for proven loss, cost or expense in connection with the Work;

**8.1.2** The reasonable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with Subcontractors and Design Consultants; and

**8.1.3** Overhead and profit in the amount of fifteen percent (15%) on the sum of items 8.1.1 and 8.1.2 above.

**8.2** In addition to the amounts set forth in Section 8.1 above, Design-Builder shall be entitled to receive one of the following as applicable:

**8.2.1** If Owner terminates this Agreement prior to commencement of construction, Design-Builder shall be paid ten percent (10%) of the remaining balance of the Contract Price.

**8.2.2** If Owner terminates this Agreement after commencement of construction, Design-Builder shall be paid ten percent (10%) of the remaining balance of the Contract Price.

**8.3** If Owner terminates this Agreement pursuant to Section 8.1 above and proceeds to design and construct the Project through its employees, agents or third parties, Owner's rights to use the Work Product shall be as set forth in Section 4.3 hereof. Such rights may not be transferred or assigned to others without Design-Builder's express written consent and such third parties' agreement to the terms of Article 4.

## **Article 9**

### **Representatives of the Parties**

**9.1 Owner's Representatives.**

**9.1.1** Owner designates the individual listed below as its Senior Representative ("Owner's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

Jeanie Grandstaff  
Director  
Hopewell Regional Wastewater Treatment Facility  
P.O. Box 969, 231 Hummel Ross Road  
Hopewell, VA 23860  
Email: [jgrandstaff@hopewellva.gov](mailto:jgrandstaff@hopewellva.gov)  
Phone: 804-541-2210 x 204

**9.1.2** Owner designates the individual listed below as its Owner's Representative, which individual has the authority and responsibility set forth in Section 3.4 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

Matthew Ellinghaus, P.E.  
Deputy Director  
Hopewell Regional Wastewater Treatment Facility  
P.O. Box 969, 231 Hummel Ross Road  
Hopewell, VA 23860  
Email: [mellinghaus@hopewellva.gov](mailto:mellinghaus@hopewellva.gov)  
Phone: 804-541-2214 x 208

## **9.2 Design-Builder's Representatives.**

**9.2.1** Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

Tony Snead  
Vice President  
HDR Constructors, Inc.  
4435 Main Street, Suite 1000  
Kansas City, MO 64111  
Email: [tony.snead@hdrinc.com](mailto:tony.snead@hdrinc.com)  
Phone: 602.723.8296

**9.2.2** Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

Robert Huie  
PC Construction Company  
3232 Krisam Creek Drive, Suite 100  
Loganville, Georgia 30052  
Email: [rhuie@pcconstruction.com](mailto:rhuie@pcconstruction.com)  
Phone: 678-922-6535

## Article 10

### **Bonds and Insurance**

**10.1 Insurance.** Design-Builder and Owner shall procure the insurance coverages set forth in the Insurance Exhibit D attached hereto and in accordance with Article 5 of the General Conditions of Contract.

**10.2 Bonds and Other Performance Security.** Design-Builder shall provide the following performance bond and labor and material payment bond or other performance security:

#### **Performance Bond.**

☒ Required

☐ Not Required

#### **Payment Bond.**

☒ Required

☐ Not Required

## Article 11

### **Other Provisions**

**11.1 Other provisions, if any, are as follows:** *(Insert any additional provisions)*

None.

In executing this Agreement, Owner and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary corporate approvals to execute this Agreement, and perform the services described herein.

#### **OWNER:**

City of Hopewell  
(Name of Owner)

[Signature]  
(Signature)

Mark A. Haley  
(Printed Name)

#### **DESIGN-BUILDER:**

Hopewell Nutrient Partners  
(Name of Design-Builder)

[Signature]  
(Signature)

TONY SNEAD  
(Printed Name)

City Manager  
(Title)

Date: 06/13/2014

Vice President  
(Title)

Date: 06/09/2014

## **EXHIBIT A**

### **Scope of Work and Basis of Design**

## **EXHIBIT B**

### **Schedule**

## **EXHIBIT C**

### **Contract Price**

## **EXHIBIT D**

### **Insurance**