

**BC HYDRO SITE C CLEAN ENERGY PROJECT**

**MAIN CIVIL WORKS CONTRACT**

for the Site C Clean Energy Project

British Columbia Hydro and Power Authority

and

Peace River Hydro Partners

Dated: December 18, 2015

**AGREEMENT**

**SITE C CLEAN ENERGY PROJECT**

**MAIN CIVIL WORKS CONTRACT**

**THIS AGREEMENT** made effective as of the 18<sup>th</sup> day of December, 2015 (BC Hydro Reference # 520938 )

**BETWEEN:**

**BRITISH COLUMBIA HYDRO AND POWER AUTHORITY**, a British Columbia Crown Corporation having its head office at 333 Dunsmuir Street, Vancouver, B.C. V6B 5R3

("BC Hydro")

**AND:**

**PEACE RIVER HYDRO PARTNERS**, a British Columbia general partnership having its head office at [REDACTED]

[REDACTED], by its partners, Acciona Infrastructure Canada Inc., Samsung C&T Canada Ltd. and Petrowest Corporation

(collectively, the "**Contractor**")

**WHEREAS:**

- A. BC Hydro intends to construct the Site C Clean Energy Project (the "**Project**") which is a proposed third dam and hydroelectric generating station on the Peace River in northeast British Columbia;
- B. The Contractor is a knowledgeable and experienced contractor in the performance of work similar to the Work, and is the successful proponent under RFP #1824; and
- C. The parties wish to enter into a formal contract for the performance of the Work.

**NOW THEREFORE** in consideration of the mutual covenants and conditions contained in the Contract, BC Hydro and the Contractor agree as follows:

**1 THE WORK**

**1.1 Scope of Work**

The scope of the Work is as summarized in Appendix 6-1 [Scope of Work] and includes:

- (a) diversion works;
- (b) excavation and earth works;
- (c) relocation of surplus excavated materials;
- (d) dams and cofferdams;
- (e) roller compacted concrete buttress;

Main Civil Works

- (f) approach channel and tailrace; and
- (g) ancillary Work, including:
  - (i) permanent roads on the Work Site;
  - (ii) permanent drainage on the Work Site;
  - (iii) permanent debris-handling facilities on the Work Site;
  - (iv) boat launching facilities;
  - (v) supply and install permanent instrumentation; and
  - (vi) restoration at the Site.

## 1.2 Labour, Materials and Equipment

Except as expressly provided otherwise in the Contract Documents, the Contractor will provide all labour, materials and equipment necessary for the complete performance of the Work.

## 1.3 Title to Materials

Unless expressly stated otherwise in the Contract Documents, title to any materials provided by the Contractor for the Work will pass to BC Hydro free and clear of all encumbrances upon the incorporation of such materials into the Work.

## 1.4 Initial Work Program and Schedule

Attached at Appendix 4-2 [Work Program and Schedule] is the initial schedule for the Contractor's performance of the Work. The Contractor will revise and expand this initial schedule in accordance with Schedule 4 [Work Program and Schedule].

## **2 INTERPRETATION**

### 2.1 Definitions

In the Contract Documents, unless the context otherwise requires, capitalized terms have the meanings set out in Schedule 1 [Definitions and Interpretation].

### 2.2 Contract Documents

The following is a complete list of the Contract Documents:

- (a) this Agreement;
- (b) Schedule 1 [Definitions and Interpretation];
- (c) Schedule 2 [General Conditions]:
  - (i) Appendix 2-1 [Design-Build Review Process];
  - (ii) Appendix 2-2 [Good Weather Baseline Table];

- (f) approach channel and tailrace; and
- (g) ancillary Work, including:
  - (i) permanent roads on the Work Site;
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  - (ii) Appendix 2-2 [Good Weather Baseline Table];

- (iii) Appendix 2-3 [Project Related Permits];
- (iv) Appendix 2-4 [Site Access, Conditions and Services];
- (v) Appendix 2-5 [Proposal Extracts];
- (vi) Appendix 2-6 [Material Sources Outside Dam Site Area];
- (vii) Appendix 2-7 [Leave to Commence]; and
- (viii) Appendix 2-8 [SharePoint Technical Requirements for Contractors];
- (d) Schedule 3 [Roles and Representatives];
- (e) Schedule 4 [Work Program and Schedule]:
  - (i) Appendix 4-1 [BC Hydro Project Schedule]; and
  - (ii) Appendix 4-2 [Work Program and Schedule];
- (f) Schedule 5 [Submittals Procedure]:
  - (i) Appendix 5-1 [Form of Submittal Schedule];
- (g) Schedule 6 [Specifications and Drawings]:
  - (i) Appendix 6-1 [Scope of Work];
  - (ii) Appendix 6-2 [Technical Specifications];
  - (iii) Appendix 6-3 [Drawings]; and
  - (iv) Appendix 6-4 [Reference Documents];
- (h) Schedule 7 [Environmental Obligations]:
  - (i) Appendix 7-1 [Contractor Environmental Incident Report Form];
- (i) Schedule 8 [Quality Management]:
  - (i) Appendix 8-1 [Design Quality Management Plan]; and
  - (ii) Appendix 8-2 [Construction Quality Management Plan];
- (j) Schedule 9 [Communications Roles];
- (k) Schedule 10 [Safety]:
  - (i) Appendix 10-1 [Safety Areas]; and
  - (ii) Appendix 10-2 [Contractor Safety Incident Report Form];

- (l) Schedule 11 [Prices and Payment]:
  - (i) Appendix 11-1 [Schedule of Prices and Estimated Quantities];
  - (ii) Appendix 11-2 [Measurement and Payment];
  - (iii) Appendix 11-3 [Form of Payment Application – Schedule of Values];
  - (iv) Appendix 11-4 [Form of Performance Bond];
  - (v) Appendix 11-5 [Form of Labour & Material Payment Bond];
  - (vi) Appendix 11-6 [Form of Letter of Credit (Use for Performance, Labour & Material Payment and Advance Payment)];
  - (vii) Appendix 11-7 [Form of Parent Company Guarantee];
  - (viii) Appendix 11-8 [Form of Environmental Compliance Statement];
  - (ix) Appendix 11-9 [Form of Statutory Declaration]; and
  - (x) Appendix 11-10 [Sample Escalation Calculations];
- (m) Schedule 12 [Changes];
- (n) Schedule 13 [Insurance];
  - (i) Appendix 13-1 [Wrap-Up Liability Insurance Specifications]; and
  - (ii) Appendix 13-2 [Course of Construction Insurance Specifications];
- (o) Schedule 14 [Dispute Resolution Procedure]:
  - (i) Appendix 14-1 [Site C Referee Panel]; and
  - (ii) Appendix 14-2 [Referee Agreement];
- (p) Schedule 15 [Records]:
  - (i) Appendix 15-1 [Record Classification Requirements];
- (q) Schedule 16 [Aboriginal Inclusion and Reporting Requirements];
  - (i) Appendix 16-1 [Aboriginal Inclusion Performance Report]; and
- (r) Schedule 17 [Privacy Protection].

The Contract Documents include any and all additional and amending documents issued in accordance with the provisions of the Contract Documents.

### 2.3 Schedules, Appendices, Exhibits and Attachments

The Schedules, Appendices, Exhibits and Attachments and the terms set out in them will be deemed to be fully a part of the Contract.

**3 CONTRACT PRICE**

**3.1 Contract Price**

The price for the Work (the “**Contract Price**”) will be the sum in Canadian dollars of the following:

- (a) the product of the actual quantities of the Price Items listed in Appendix 11-1 [Schedule of Prices and Estimated Quantities] which are incorporated into or related to the Work and the unit prices listed in Appendix 11-1 [Schedule of Prices and Estimated Quantities]; plus
- (b) all lump sums, if any, as listed in Appendix 11-1 [Schedule of Prices and Estimated Quantities], for Price Items incorporated into or related to the Work; plus
- (c) any payment adjustments, including any payments owing on account of Changes, approved in accordance with the provisions of the Contract Documents.

**3.2 Entire Compensation**

The Contract Price will be the entire compensation owing to the Contractor for the complete performance of the Work and this compensation will cover and include all profit and all costs of labour, supervision, material, equipment, transportation and delivery, overhead, financing and all other costs and expenses whatsoever incurred by the Contractor in performing the Work.

**4 REPRESENTATIVES**

For the purposes of Section 2.1 and Section 3.1 of Schedule 3 [Roles and Representatives], the following are the initial Representatives of the parties:

Hydro’s Representative	-	██████████ ██
Contractor’s Representative	-	████████████████████ ██

If no names or contact details are included in this Section 4 as of the Effective Date, then each party will promptly give written notice to the other party of its respective Representative in accordance with Schedule 3 [Roles and Representatives]. Either party may, at any time and from time to time, change its Representative in accordance with Schedule 3 [Roles and Representatives].

**5 NOTICES**

**5.1 Address for Notice**

Unless otherwise expressly required to be given to Hydro’s Representative or the Contractor’s Representative pursuant to the Contract Documents, any notice or communication required or permitted to be given under the Contract will be in writing and will be considered to have been sufficiently given when delivered by registered mail, by hand or by email to the address of the applicable party set out below:

- (a) if to BC Hydro:

British Columbia Hydro and Power Authority  
333 Dunsmuir Street  
Vancouver, BC V6B 5R3

[Redacted]

(b) if to the Contractor:

Peace River Hydro Partners

[Redacted]

[Redacted]

and

[Redacted]

[Redacted]

and

[Redacted]

[Redacted]

(c) to such other address as either party may, from time to time, designate in the manner set out above, provided that the Contractor may not change its address under Section 5.1 to an address other than one in British Columbia without BC Hydro's prior written consent.

5.2 Delivery of Email

For the purposes of Section 5.1 of this Agreement, unless otherwise agreed in writing between Hydro's Representative and the Contractor's Representative, an email is deemed to have been delivered when:

- (a) it enters an information processing system that the recipient has designated or uses for the purpose of receiving email or information of the type sent and from which the recipient is able to retrieve the email; and
- (b) it is in a form capable of being processed by that system.

An email is deemed to be delivered under this Section 5.2 even if no individual with the recipient is aware of its delivery.

## **6**     **GENERAL**

### 6.1     Language

All documents to be delivered under the Contract will be provided in English, the Contractor's Representative will be fluent in English and the Contractor's key personnel will be able to communicate effectively with BC Hydro in English.

### 6.2     Amendments

No amendment to the terms of the Contract will be binding on BC Hydro or the Contractor or effective, unless made in writing and signed by an authorized representative of each party.

### 6.3     Entire Agreement, Waivers And Consents In Writing

The Contract Documents, and the instruments and documents to be executed and delivered pursuant to the Contract Documents, constitute the entire Contract between the parties, expressly superseding all prior agreements and communications (both oral and written) between the parties with respect to all matters contained in the Contract Documents and such instruments and documents, and contain all the representations and warranties of the respective parties. For certainty:

- (a)     RFQ #1824, and the Contractor's response to RFQ #1824;
- (b)     RFP #1824, and the Contractor's proposal to RFP #1824, except as expressly included in Appendix 2-5 [Proposal Extracts]; and
- (c)     any representations, warranties or guarantees made during the competitive procurement process under RFP #1824,

are expressly not included in the Contract and will not be referred to in any way in the interpretation of the Contract.

In addition:

- (d)     no waiver of any provision of the Contract; and
- (e)     no consent required pursuant to the Contract Documents,

is binding or effective unless it is in writing and signed by an authorized representative of the party providing such waiver or consent.

### 6.4     Assignment

Neither party may assign the Contract, in whole or in part, without the prior written consent of an authorized representative of the other party, which consent may not be unreasonably withheld.

Notwithstanding the foregoing, BC Hydro may assign the Contract to any of its Affiliates or to any third party that amalgamates or merges with BC Hydro or which acquires all or substantially all of the assets of BC Hydro or which was, immediately prior to the assignment, a part of BC Hydro, conditional upon the assignee covenanting and agreeing with the Contractor to be bound to the Contractor by the provisions of the Contract, and provided that the assignee has the power and capacity to carry out the transactions contemplated by this Contract to be carried out by BC Hydro and to duly observe and perform all of the obligations contained in this Contract to be observed and performed by BC Hydro. Subject to the

foregoing, the Contract will enure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.

6.5 Further Assurances

Each party will do, execute and deliver, or will cause to be done, executed and delivered, all such further acts, documents (including certificates, declarations, affidavits, reports and opinions) and things as the other party may reasonably request for the purpose of giving effect to the Contract or for the purpose of establishing compliance with the representations, warranties and obligations of the Contract.

6.6 Governing Law

The Contract will be governed by and construed in accordance with the Laws of the Province of British Columbia and the federal Laws of Canada applicable in British Columbia.

6.7 Counterparts

This Agreement may be executed and delivered in several counterparts, including by facsimile (or other similar electronic means, including via pdf), each of which when so executed and delivered will be deemed to be an original and such counterparts together will be one and the same instrument.

**IN WITNESS WHEREOF** the parties hereto have executed this Agreement as of the day and year first above written.

**BRITISH COLUMBIA HYDRO AND POWER AUTHORITY**

[Redacted signature block]

Authorized Signatory

**PEACE RIVER HYDRO PARTNERS**, by its partners:

**ACCIONA INFRASTRUCTURE CANADA INC.**

[Redacted signature block]

**SAMSUNG C&T CANADA LTD.**

[Redacted signature block]

**PETROWEST CORPORATION**

[Redacted signature block]