

## AGREEMENT

### SITE PREPARATION – NORTH BANK

**THIS AGREEMENT** (this "**Agreement**") made effective as of the 23<sup>rd</sup> day of July, 2015 (BC Hydro Reference – RFP#1951-CR#539197)

BETWEEN:

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

("BC Hydro")

AND:

**MORGAN CONSTRUCTION AND ENVIRONMENTAL LTD.**, a corporation established pursuant to the laws of Alberta having its head office at 17303 102 Avenue, Edmonton, Alberta, T5S 1J8

(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 B.C. and wishes to enter into a formal contract for the performance of Work relating to the Project; and
- B. The Contractor wishes to enter into a formal contract with BC Hydro 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 Contractor will provide all labour, materials and equipment necessary for the complete performance of the Work. The Contractor will perform the Work in accordance with the requirements of the Contract Documents, including Appendix D – Scope of Work, Appendix G – Specifications and Appendix K – Drawings and Plans.

##### 1.2 Initial Work Program and Schedule

Attached at Appendix F – Work Program and Schedule is the initial schedule for the performance of the Work. The Contractor will revise and expand the initial schedule as required in Appendix A – General Conditions (Construction).

## **2 INTERPRETATION**

### 2.1 Definitions

In this Agreement, unless the context otherwise requires, capitalized terms have the meanings set out in Appendix A – General Conditions (Construction).

### 2.2 Contract Documents

The following are the “**Contract Documents**”:

- (a) this Agreement;
- (b) Appendix A – General Conditions (Construction);
- (c) Appendix B – Supplementary General Conditions;
- (d) Appendix C – BC Hydro’s Policies and Procedures;
- (e) Appendix D – Scope of Work;
- (f) Appendix E – Schedule of Quantities and Prices;
- (g) Appendix F – Work Program and Schedule;
- (h) Appendix G – Specifications;
- (i) Appendix H – Safety;
- (j) Appendix I – Environmental Obligations;
- (k) Appendix J – Quality Management;
- (l) Appendix K – Drawings and Plans;
- (m) Appendix L – Aboriginal Inclusion and Reporting Requirements;
- (n) Appendix M – Dispute Resolution Procedure; and
- (o) Appendix N – Insurance Requirements.

## **3 CONTRACT PRICE**

### 3.1 Contract Price

As payment for the performance of the Work, BC Hydro will pay the Contractor [REDACTED], as may be adjusted in accordance with the Contract Documents (the “**Contract Price**”), plus GST.

### 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 supervision, labour, material, equipment, transportation and delivery, overhead, financing and all other costs and expenses whatsoever incurred by the Contractor in performing the Work.



- (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 this 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, 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 LANGUAGE

All documents to be given under the Contract will be provided in English and the Contractor's Representative and key personnel will be fluent in English.

## 7 AMENDMENTS

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

## 8 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 contains all the representations and warranties of the respective parties. For certainty:

- (a) RFP #1951, and the Contractor's proposal to RFP #1951; and
- (b) any representations, warranties or guarantees made during the competitive procurement process under RFP #1951,

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

In addition:

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

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

## 9 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 successor covenanting and agreeing with the Contractor to be bound to the Contractor by the provisions of the Contract. 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.

Notwithstanding the above, the Contractor will give reasonable consideration to a request from BC Hydro for the Contractor to assign the Contract, in whole or in part, to another party where such assignment is for the purpose of improving the implementation of the Project including, by way of illustration, to reduce interface risks between Project contractors or to achieve efficiencies.

## 10 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.

## 11 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.

## 12 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**

Per: 

Authorized Signatory

### **MORGAN CONSTRUCTION AND ENVIRONMENTAL LTD.**

Per: 

Authorized Signatory