

MAIN CIVIL WORKS CONTRACT

SCHEDULE 12

CHANGES

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1 INTERPRETATION

1.1 Definitions

In this Schedule 12 [Changes], in addition to the definitions set out in Schedule 1 [Definitions and Interpretation]:

“**Change**” means a change, including an addition, deletion, alteration, substitution or otherwise, to the Work;

“**Change Directive**” has the meaning set out in Section 2.5 of this Schedule 12 [Changes];

“**Change Order**” has the meaning set out in Section 2.4 of this Schedule 12 [Changes];

“**Change Report**” means a written report prepared by the Contractor in response to a Preliminary Change Instruction, containing the information described in Section 3.3 of this Schedule 12 [Changes];

“**Preliminary Change Instruction**” has the meaning set out in Section 3.1 of this Schedule 12 [Changes];

“**Small Tool**” means a small tool or equipment item with a replacement value of no more than \$1,500.00 per tool or item; and

“**Value Engineering Proposal**” has the meaning set out in Section 7.1 of this Schedule 12 [Changes].

2 CHANGES

2.1 BC Hydro’s Right to Require Changes

BC Hydro may require a Change by issuing a written Change Order or a written Change Directive, and except to the extent that a Change Order or Change Directive expressly requires otherwise, the Contractor will comply with all applicable terms of the Contract Documents, including Schedule 2 [General Conditions] and Schedule 6 [Specifications and Drawings] in implementing the Change.

2.2 Restrictions on Changes

BC Hydro will not at any time require, and the Contractor may refuse to implement, a Change which:

- (a) would be contrary to Laws;
- (b) would render the insurance policies required under this Contract void or voidable and BC Hydro does not agree to replacement security satisfactory to the Contractor acting reasonably;
- (c) would cause the revocation of any Permit required by the Contractor to perform its obligations under this Contract, and such Permit would not, using reasonable efforts, be capable of amendment or renewal;
- (d) would require a new Permit for the Contractor to perform its obligations under this Contract, which Permit would not, using reasonable efforts by the Contractor or BC Hydro, as applicable, be obtainable; or

- (e) would cause the Contractor to be unable to obtain a Permit required by the Contractor to perform its obligations under this Contract, provided that such Permit was previously required but at the time of the Preliminary Change Instruction had not been obtained and such Permit would not, using reasonable efforts by the Contractor or BC Hydro, as applicable, be obtainable.

If the Contractor, acting reasonably, determines that a Change is unacceptable because it contravenes one or more of the above, then the Contractor will promptly deliver written notice to BC Hydro of its objection, with written reasons. If BC Hydro disagrees then it may deliver a Dispute Notice to the Contractor, and the parties will cooperate to have the issue resolved in a timely manner in accordance with Schedule 14 [Dispute Resolution Procedure].

2.3 No Change Without Written Direction

Except as expressly set out otherwise in the Contract Documents, the Contractor will not proceed with any Change prior to the receipt of a written Change Order or Change Directive issued by BC Hydro. No claim for an adjustment to the Contract Price or the time for the performance of the Work may be made without such written direction. The Contractor will not be entitled to, nor will the Contractor rely on, any oral representation (except in an emergency), Site meeting discussion or minutes, or other communication as approval for a Change.

2.4 Change Orders

When the adjustments, if any, to the Contract Price or the time for the performance of the Work or both with respect to a Change are agreed by BC Hydro and the Contractor, Hydro's Representative will issue a written approval (a "**Change Order**") setting out:

- (a) a description of the Work covered by the Change;
- (b) the price or method of valuation for such Work;
- (c) the total adjustment, if any, to the Contract Price (excluding only GST) on account of the Change and, for certainty, will be deemed to include all claims for compensation on account of all related costs, including all direct, indirect or "impact" costs, overheads, and all other costs, and all mark-ups and profits, even if the Change Order does not specifically mention such items; and
- (d) the net effect on the time for the performance of the Work on account of the Change and, for certainty, will be deemed to include all effects on the time for the performance of the Work, and if there is no mention in the Change Order of a required adjustment to the time for the performance of the Work, then the Change Order will be interpreted to mean that the Contractor will complete the performance of the Work covered by the Change Order without any adjustment to the time for the performance of the Work.

Hydro's Representative and the Contractor's Representative will sign the Change Order to confirm agreement and, upon receipt of a signed Change Order, the Contractor will proceed with the Change without delay.

2.5 Change Directives

Subject to Section 2.2 of this Schedule 12 [Changes], but notwithstanding any other provision of this Schedule 12 [Changes], BC Hydro may at any time issue a written direction (a "**Change Directive**") to the Contractor, signed by Hydro's Representative, directing the Contractor to proceed with a Change as described in the Change Directive, and for certainty BC Hydro may issue a Change Directive:

- (a) in the absence of a Preliminary Change Instruction;

- (b) at any time following issuance of a Preliminary Change Instruction, if the Contractor fails to provide a Change Report;
- (c) if a Change Report or Change Order is not promptly agreed upon by the parties; or
- (d) if there is a Dispute in relation to a Preliminary Change Instruction, Change Report or Change Order.

Upon receipt of a Change Directive the Contractor will proceed with the Work, including the Change, without delay, without prejudice to the Contractor's and BC Hydro's rights to claim an adjustment to the Contract Price and the time for the performance of the Work or both as a result of the Change, and the following will apply:

- (e) the valuation of the cost of the Change and impact on the Work Program and Schedule will be evaluated in the same manner as described in Section 5 of this Schedule 12 [Changes], calculated as soon as reasonably possible after the delivery of the Change Directive;
- (f) pending a final determination as to any adjustments to the Contract Price or the time for the performance of the Work or both for the Change, BC Hydro will make a monthly payment to the Contractor of amounts the Contractor substantiates that it incurred on account of the Change and that BC Hydro, acting reasonably, agrees are owing on account of the Change;
- (g) if the parties reach agreement on adjustments to the Contract Price or the time for the performance of the Work or both for the Change, BC Hydro will issue a signed Change Order confirming the valuation of the Change and the impact on the Work Program and Schedule;
- (h) if within 30 Business Days after the delivery of a Change Directive to the Contractor, or such other time as the parties acting reasonably may agree in writing, the parties have not reached agreement on a Change Order covering all Changes implemented by the Change Directive, then Hydro's Representative will deliver to the Contractor's Representative a draft Change Order acceptable to BC Hydro covering all Changes in the Change Directive, and if the Contractor does not agree to the draft Change Order within 10 Business Days of receipt by the Contractor, or such other time as the parties acting reasonably may agree in writing, then either party may refer the valuation of the cost of the Change and impact on the Work Program and Schedule to be settled in accordance with Schedule 14 [Dispute Resolution Procedure].

3 POTENTIAL CHANGES

3.1 Preliminary Change Instruction

BC Hydro may at any time issue to the Contractor a written instruction (a "**Preliminary Change Instruction**") describing a contemplated Change that BC Hydro is considering. A Preliminary Change Instruction will include sufficient description of the contemplated Change, including any requirements under Section 3.8(b) of this Schedule 12 [Changes], to permit the Contractor to prepare a Change Report.

3.2 Delivery of Change Report

Subject to Section 2.2 of this Schedule 12 [Changes], as soon as practicable and in any event, to the extent reasonably possible, within 15 Business Days after receipt of a Preliminary Change Instruction, or such other period as the parties may agree in writing acting reasonably, the Contractor will, at its cost, prepare and deliver to BC Hydro a Change Report, signed by the Contractor's Representative, for the contemplated Change described in the Preliminary Change Instruction.

3.3 Change Report Contents

As part of a Preliminary Change Instruction issued under Section 3.1 of this Schedule 12 [Changes], BC Hydro may direct the Contractor to include in its Change Report any information reasonably required to assist BC Hydro with the contemplated Change, including the following:

- (a) a description of the scope of the contemplated Change;
- (b) a comparison of the scope of Work as a result of the contemplated Change as compared to the scope prior to the Change;
- (c) subject to the Contractor's duties under Section 30.2 of Schedule 2 [General Conditions], a description of any adjustments to the Work Program and Schedule which the Contractor will require as a result of the implementation of the contemplated Change (including details of any corresponding adjustments required by any Subcontractor); and
- (d) an estimate of all Direct Costs, if any, associated with the contemplated Change, including the following (which will be shown separately if requested by BC Hydro), as applicable:
 - (i) the cost of all design, if any (based on the estimated number of hours reasonably required to perform any such design);
 - (ii) all labour, material and equipment costs, supported as the case may be by quotations from applicable Subcontractors;
 - (iii) all additional costs of direct management of the Work, including supervision of trade foremen and Site overheads;
 - (iv) all costs of Permits required on account of the Change, including any required new Permit(s) or amendment or renewal of an existing Permit(s);
 - (v) all costs associated with services provided by third party professional advisors or subcontractors;
 - (vi) an estimate of the cost savings, if any, resulting for any reason (including reduction in scope of Work or reduction in the time for the performance of the Work) from the contemplated Change;
 - (vii) any proposal(s) as to how the contemplated Change could be accomplished at a lower or zero net cost;
 - (viii) a description of the extent to which the contemplated Change would interfere with the Contractor's ability to comply with any of its obligations under the Contract, any Subcontracts, any Laws and any Permits;
 - (ix) the name of the Subcontractor(s) (if any) which the Contractor intends to engage for the purposes of implementing the contemplated Change together with a description of the qualifications of any such Subcontractor(s) so as to demonstrate the ability of such Subcontractor(s) to implement the contemplated Change;
 - (x) a description of any further effects (including benefits and impairments) which, the Contractor foresees as being likely to result from the contemplated Change;
 - (xi) a description of any actions that would be reasonably required by BC Hydro to implement the contemplated Change; and

- (xii) a description of the steps the Contractor will take to implement the contemplated Change, in such detail as is reasonable and appropriate in all the circumstances.

The cost or impact on the Work Program and Schedule of the correction of a Defect or Deficiency will not be included in the valuation of a Change.

All of the costs described in this Section 3.3 will be provided in the dollar amounts applicable as of the date of the Change Report. There will be no indexation of any cost amounts unless specifically agreed to by BC Hydro.

3.4 Change Report to Cover all Cost and Time

Any Change Report submitted by the Contractor will, except as expressly set out otherwise in the Change Report, be interpreted to represent the proposed total adjustment to the Contract Price (excluding only GST) and the net effect on the time for the performance of the Work on account of such contemplated Change, and, for certainty, will be deemed to include:

- (a) all claims for compensation on account of all related costs, including all direct, indirect or “impact” costs, overheads, and all other costs, and all mark-ups and profits, even if the Change Report does not specifically mention such items; and
- (b) all effects on the time for the performance of the Work, and if there is no mention in the Change Report of a required adjustment to the time for the performance of the Work, then the Change Report will be interpreted to mean that the Contractor will complete the performance of the Work as covered by the Change Report without any adjustment to the time for the performance of the Work.

3.5 Third Party Costs to Prepare Change Report

If the Contractor is unable to prepare a Change Report without the assistance of third party professional advisors or subcontractors, and if the Contractor wishes to be reimbursed for the costs of such third parties pursuant to Section 3.7 of this Schedule 12 [Changes], then the Contractor will only be entitled to make a claim for such costs if the Contractor obtains Hydro’s Representative’s prior written approval to retain such third parties.

3.6 Justification and Supporting Documentation for Contemplated Change Estimates

The cost estimates included in a Change Report will be in sufficient detail to allow evaluation by BC Hydro and will include such supporting information and justification as is necessary to demonstrate that:

- (a) the Contractor has used all reasonable efforts, including utilizing competitive quotes or tenders, to minimize the cost of a contemplated Change and maximize potential related cost savings;
- (b) the Contractor and Subcontractors have valued the Change as described in Section 5.1 of this Schedule 12 [Changes], and have not included margins or mark-ups not provided for in Section 5.2 of this Schedule 12 [Changes];
- (c) the full amount of any and all expenditures that have been reduced or avoided have been fully taken into account; and
- (d) the Contractor has mitigated or will mitigate, in accordance with Section 30.2 of Schedule 2 [General Conditions], the impact of the contemplated Change, including on the Work Program and Schedule and the Direct Costs to be incurred.

3.7 Contractor's Costs to Prepare Change Report

If, following receipt of a Change Report:

- (a) BC Hydro elects to proceed with the contemplated Change, then all costs incurred by the Contractor to prepare the Change Report will be paid by the Contractor, and the Change Order issued with respect to the contemplated Change will be deemed to be the entire compensation payable by BC Hydro for such Change; or
- (b) BC Hydro, for any reason, elects not to proceed with a contemplated Change, then:
 - (i) if the Contractor retained third parties pursuant to Section 3.5 of this Schedule 12 [Changes], then BC Hydro will pay the Contractor the Direct Costs paid to all such third parties who were approved in advance by Hydro's Representative; and
 - (ii) the Contractor will bear all other costs incurred by the Contractor to prepare the Change Report.

3.8 Agreement on a Change

Following receipt by BC Hydro of a Change Report prepared in accordance with Section 3.3 of this Schedule 12 [Changes]:

- (a) as soon as practicable, and in any event within 15 Business Days after BC Hydro receives a Change Report, or such longer period as the parties acting reasonably may agree in writing, BC Hydro will deliver to the Contractor any requests for clarifications or amendments, and on request from Hydro's Representative the parties' Representatives will meet without delay and use all reasonable efforts to reach agreement on the Change Report;
- (b) if BC Hydro is required by applicable Law or Governmental Authority to require the Contractor to competitively tender any contract in relation to a contemplated Change, the Contractor will, to BC Hydro's satisfaction acting reasonably, obtain and evaluate competitive tenders for the proposed Change; and
- (c) BC Hydro may in writing modify a Preliminary Change Instruction at any time prior to the parties reaching an agreement on the Change Report in which case the Contractor will, as soon as practicable and in any event not more than 10 Business Days after receipt of such modification (or such longer period as the parties acting reasonably may agree in writing), notify BC Hydro of any consequential changes to the Change Report.

If Hydro's Representative accepts the Change Report in response to a contemplated Change, or the parties otherwise agree to proceed with the contemplated Change on terms different from those in the Change Report, then the Change Report or such other agreed to terms will be recorded in a Change Order, signed by the parties and issued pursuant to Section 2.4 of this Schedule 12 [Changes].

3.9 Disagreement on Change Report

If the parties do not agree on a Change Report, then BC Hydro may:

- (a) elect not to proceed with the Change described in the Preliminary Change Instruction; or
- (b) issue a Change Directive with respect to some or all of the Change described in the Change Report.

4 CLAIM FOR A CHANGE

4.1 Claim for a Change

If the Contractor at any time wishes to claim that a Change has occurred, then:

- (a) if the Contractor receives a direction, instruction or decision from Hydro's Representative for which a Change Order or Change Directive was not given, then the Contractor may only claim an adjustment to the Contract Price or an adjustment to the time for the performance of the Work or both as follows:
 - (i) prior to proceeding with such direction, instruction or decision, the Contractor will give written notice to Hydro's Representative of its intention to make such a claim with sufficient detail to permit Hydro's Representative to be able to understand the basis for the claim as well as the anticipated impact on the Contract Price, if any, and the time for the performance of the Work, if any; and
 - (ii) the Contractor will maintain daily records of the resources used in connection with the claimed Change, including labour, equipment and materials, prepared contemporaneously with the performance of the affected Work, and submit such records, together with the amount claimed for such affected Work, to Hydro's Representative on a weekly basis with each submission containing the previous week's records;
- (b) upon receipt of a notice under Section 4.1(a)(i) of this Schedule 12 [Changes] from the Contractor, Hydro's Representative will promptly investigate the conditions giving rise to the claimed Change;
- (c) in no event will the Contractor be entitled to, nor will the Contractor make any claim for, an adjustment to the Contract Price or the time for the performance of the Work on account of any circumstance, condition or event that entitles the Contractor to make a claim under Section 4.1 of this Schedule 12 [Changes]:
 - (i) that occurs more than seven days prior to the notice delivered by the Contractor to Hydro's Representative as provided by Section 4.1(a)(i) of this Schedule 12 [Changes]; or
 - (ii) notwithstanding Section 4.1(c)(i) of this Schedule, to the extent BC Hydro is materially prejudiced by any delay in the Contractor complying with its obligations under Section 4.1(a)(i) of this Schedule; and
- (d) in no event will the Contractor be entitled to, nor will the Contractor make any claim for, an adjustment to the Contract Price on account of any circumstance, condition or event that entitles the Contractor to make a claim under Section 4.1 of this Schedule 12 [Changes] for which the Contractor has not kept, nor made available to Hydro's Representative, the records as required under Section 4.1(a)(ii) of this Schedule 12 [Changes].

If Hydro's Representative refuses the Contractor's request for a Change Order or Change Directive, then such refusal will be subject to settlement in accordance with Schedule 14 [Dispute Resolution Procedure].

5 VALUATION OF CHANGES

5.1 Valuation of Changes

The value and method of valuation of a Change will be determined by one or more of the following methods:

- (a) as set out in a Change Report, if any, and accepted in writing by Hydro's Representative, in accordance with this Schedule 12 [Changes];
- (b) by a lump sum as agreed by the parties covering some or all of the Change;
- (c) by unit prices as applicable to the Work covered by the Change; and
- (d) to the extent not settled under one or more of Sections 5.1(a), 5.1(b) or 5.1(c) of this Schedule 12 [Changes], by the Direct Costs (or cost saving) as a result of implementing the Change, calculated subject to the following:
 - (i) the rates and charges applied will be no greater than the market rates and charges prevailing at the time of the implementation of the Change, paid between arms-length contracting parties; and
 - (ii) unless otherwise agreed by BC Hydro in writing, the Contractor will obtain competitive quotations or tenders for all work, equipment and materials required to implement the Change.

The final evaluation of a Change will take account of any savings to the Contractor resulting from the Change and accordingly the valuation of a Change will be the aggregate of the Direct Costs minus the aggregate of the cost savings the Contractor reasonably incurred or resulting from the implementation of the Change. For certainty, a Change may have a net cost, or a net saving, or may result in no net cost or saving.

5.2 Mark-Up on Changes

If and to the extent a Change is valued under Section 5.1(a), 5.1(b) or 5.1(c) of this Schedule 12 [Changes] then no additional markup will be payable in addition to the amounts determined under Section 5.1(a), 5.1(b) or 5.1(c) of this Schedule 12 [Changes].

If a Change is valued under Section 5.1(d) of this Schedule 12 results in:

- (a) a net cost then, in addition to the net Direct Costs, BC Hydro will pay the Contractor a mark-up of ██████ on such Direct Costs; and
- (b) a net saving then the Contractor will pay BC Hydro such net saving without adjustment of such net saving on account of any mark-up.

5.3 Adjustments to Time for the Performance of the Work

Subject always to the Contractor's duties under Section 30.2 of Schedule 2 [General Conditions], the time for the performance of the Work will be adjusted on account of a Change by the net amount of time reasonably required by the Contractor to accommodate and perform the Change, taking account of any impacts that require more time, and any impacts, that result in time savings, as follows:

- (a) as set out in a Change Report, if any, and accepted by Hydro's Representative pursuant to Section 3.8 of this Schedule 12 [Changes];

- (b) as otherwise agreed in writing by the parties; or
- (c) in the absence of an agreement, in accordance with Schedule 14 [Dispute Resolution Procedure].

6 EMERGENCY

6.1 Emergency

Notwithstanding any other provision in the Contract, Hydro's Representative may, in the event of an emergency, issue oral orders to the Contractor for any Change required by reason of an emergency. The Contractor will proceed with such Change without delay, without prejudice to the Contractor's right to claim an adjustment to the Contract Price or the time for the performance of the Work or both. Hydro's Representative will confirm such orders in the form of a Change Order or Change Directive as soon as practicable.

7 VALUE ENGINEERING PROPOSALS

7.1 Value Engineering

The Contractor may at any time submit a proposal to BC Hydro (a "**Value Engineering Proposal**") to implement modifications to the Specifications or Drawings, other than Specifications or Drawings prepared by the Contractor with respect to Design-Build Work, for the purpose of achieving efficiencies and reducing the Contract Price or the overall cost to BC Hydro of the Project.

7.2 Content of Value Engineering Proposal

A Value Engineering Proposal will:

- (a) set out all the information required in a Change Report as required under Section 3.3 of this Schedule, modified to apply to a Value Engineering Proposal;
- (b) specify the Contractor's reasons and justification for proposing the Value Engineering Proposal;
- (c) indicate any implications of the Value Engineering Proposal, including a difference between the existing and the proposed requirements of this Contract, and the comparative advantages of each to the Contractor and BC Hydro;
- (d) indicate whether a payment by BC Hydro in respect of Direct Costs or a variation to the Contract Price is proposed and, if so, give a detailed estimate of such proposed payment or variation;
- (e) indicate if there are any dates by which a decision by BC Hydro must be made; and
- (f) include such other information and documentation as may be reasonably requested by BC Hydro to fully evaluate and consider the Value Engineering Proposal.

7.3 Costs of Developing Value Engineering Proposal

The Contractor may deliver to BC Hydro preliminary information with respect to a proposed Value Engineering Proposal, but unless BC Hydro, in its discretion, agrees to pay or share the costs of developing a Value Engineering Proposal, the costs of investigating a potential Value Engineering Proposal will be borne entirely by the Contractor.

7.4 Evaluation of Value Engineering Proposal

BC Hydro may reject a Value Engineering Proposal if the Contractor fails to demonstrate that the Value Engineering Proposal:

- (a) was originated and initiated solely by the Contractor (including by the Contractor bearing all research and development costs) without the involvement of BC Hydro or its consultants; and
- (b) offers savings, innovation or efficiency that is not otherwise called for or provided by this Contract..

BC Hydro will evaluate and give consideration to a Value Engineering Proposal taking into account all relevant issues, including whether:

- (c) a change in the Contract Price will occur;
- (d) the Value Engineering Proposal affects the quality or delivery of the Works;
- (e) the Value Engineering Proposal will interfere with the relationship of BC Hydro with any third parties;
- (f) the financial strength of the Contractor is sufficient to deliver the changed Works;
- (g) the residual value of the Works is affected; and
- (h) the Value Engineering Proposal materially affects the risks or costs to which BC Hydro is exposed.

BC Hydro may request clarification or additional information regarding the Value Engineering Proposal, and may request modifications to the Value Engineering Proposal.

7.5 Acceptance and Implementation of Value Engineering Proposal

Notwithstanding any potential cost savings of a Value Engineering Proposal, BC Hydro is under no obligation to accept a Value Engineering Proposal and may in its sole discretion elect not to implement a Value Engineering Proposal. A Value Engineering Proposal that is accepted by BC Hydro will be implemented as a Change and the Contractor will not implement a Value Engineering Proposal prior to the issuance of a Change Order.

7.6 Sharing Benefits of a Value Engineering Proposal

If the Value Engineering Proposal causes or will cause the costs of the Contractor to decrease, after taking into account the agreed implementation and reasonably allocated development costs (incurred by the Contractor) of the Value Engineering Proposal (taking into account any other uses of the Value Engineering Proposal by the Contractor, and taking account of the costs, if any, that BC Hydro will be required to incur to implement the Value Engineering Proposal), the net savings in the costs of the Contractor will be shared equally by the Contractor and BC Hydro, and BC Hydro's share of the net savings will be reflected in a reduction to the Contract Price.