

SCHEDULE 17

CHANGE ORDERS

SECTION A GENERAL

A1. Capitalized Terms

A1.1 Capitalized terms used in this Schedule 17 have the meanings set out in the Design Build Agreement, unless otherwise expressed in this Schedule 17.

A2. Definitions

A2.1 In this Schedule 17, the following terms have the following meanings:

- (a) **“Change Order Confirmation”** means a Confirmation (as described in Schedule 5 – Review Procedure) provided by the City of:
 - (i) the Estimate, and, if applicable, of any adjustments to the Project Schedule or Contract Price; or
 - (ii) the Change Order Enquiry, if the proposed Change Order is not expected to result in a change to the Contract Price, the Project Schedule, or the Scheduled Substantial Completion Date;
- (b) **“Change Order Directive”** means a written instruction and description of a proposed Change Order, designated as a “Change Order Directive” (submitted as described in Schedule 13 – Document Management System - Appendix A – Document Numbering Standard, Table 17) and signed by the City, directing Design Builder to immediately proceed with the work associated and which will be subsequently formalized with a Change Order ;
- (c) **“Change Order Enquiry”** means a written notice and description of a proposed Change Order (submitted as described in Schedule 13 – Document Management System - Appendix A – Document Numbering Standard Table 17) including where applicable the method of procurement for the Change Order.
- (d) **“Estimate”** means a detailed breakdown, estimate and other information attributable to a Change Order prepared by Design Builder (submitted as described in Schedule 13 – Document Management System - Appendix A – Document Numbering Standard Table 17) in accordance with and meeting the requirements of Section C2.4 of this Schedule 17 ;
- (e) **“Own Forces Work”** has the meaning given in Section E1.1(A) of this Schedule 17;
- (f) **“Subcontractor Work”** has the meaning given in Section E1.2 of this Schedule 17;

- (g) **“Third Party Input”** has the meaning given in Section C2.2 of this Schedule 17;
- (h) **“Time Impact Analysis”** has the meaning indicated in Section C4 of this Schedule 17;

SECTION B GENERAL PROVISIONS

B1. Change Order

B1.1 Subject to the provisions of this Schedule 17 and without invalidating the Design Build Agreement, the City may from time to time propose or require Design Builder to carry out and implement a Change Order. Design Builder shall not be entitled to any payment, compensation or extension of time for a Change Order except in accordance with the Design Build Agreement and this Schedule 17. A Change Order shall not be regarded as confirming an extension to the Scheduled Substantial Completion Date unless expressly stipulated. If the Parties cannot agree on whether a matter is a Change Order, the Parties shall resolve the disagreement in accordance with the process set out in Schedule 7 – Dispute Resolution Procedure.

B2. Valuation and Payments for Reductions or Avoided Costs

- B2.1 If a Change Order involves any reduction in the Work and results in net savings in costs to Design Builder for completing the Project, then the value of all such savings shall be reflected in a lump sum payment to the City to the extent as determined by the Parties, acting reasonably.
- B2.2 Design Builder shall not be entitled to claim for any losses, costs or damages for fixed overhead or profit due to the reduction, deletion or removal of any part of the Project, except to the extent that any of such amounts would have been, or will be incurred by Design Builder, including irrevocable commitments such as third-party break fees or penalties, and included in Progress Payments payable by the City after the date on which any part of the Project is reduced, deleted or removed.

SECTION C CHANGE ORDER ENQUIRY PROCESS

C1. Initiating a Change Order Enquiry

- C1.1 If the City proposes or requires a Change Order as set out in Section G1.1 of the DBA, it will deliver to Design Builder a Change Order Enquiry submitted as described in Schedule 13 – Document Management System - Appendix A – Document Numbering Standard.
- C1.2 Change Order Enquiry Requirements
- C1.3 For a proposed Change Order that is expected to result in a change to the Contract Price, the Project Schedule, or the Scheduled Substantial Completion Date, the Change Order Enquiry will:

- (a) describe the proposed Change Order with sufficient detail to enable Design Builder to prepare an Estimate;
- (b) detail Design Build Agreement section additions or deletions;
- (c) indicate the method of adjustment in the Contract Price resulting from the Change Order determined by one or more of the following methods:
 - (i) by estimate in a lump sum;
 - (ii) by the unit prices and methods of measurement as set out in the Design Build Agreement or subsequently agreed upon; or
 - (iii) by the actual cost of the change in Work to the Design Builder plus a fixed fee; and
- (d) indicate the proposed Payment Item to add to Schedule 9 – Progress Payments, to which payment for the completion of the Change Order will apply.

C1.4 For a proposed Change Order that is not expected to result in a change to the Contract Price, the Project Schedule, or the Scheduled Substantial Completion Date, the Change Order Enquiry will:

- (a) detail Design Build Agreement section additions or deletions;
- (b) indicate to Design Builder that the proposed Change Order is not expected to result in a change to the Contract Price, the Project Schedule, or the Scheduled Substantial Completion Date;
- (c) indicate to Design Builder that an Estimate is not required to be delivered to the City; and
- (d) indicate that the process will now proceed to the Change Order Confirmation process in Section E2 of this Schedule 17.

C1.5 If the City would be required by Applicable Law to require Design Builder to seek invitational tenders or to competitively tender any contract in relation to the proposed Change Order, then the City may include in the Change Order Enquiry the requirement that Design Builder must seek and evaluate invitational tenders or quotations, or seek and evaluate competitive tenders, in relation to the Change Order. For certainty, the Design Builder's Estimate may include, *inter alia*, changes due to impacts on the Scheduled Substantial Completion Date, the Project Schedule and changes in the Contract Price resulting from the aforesaid requirement to seek invitational tenders or competitively tender any contract in relation to the proposed Change Order.

C2. Design Builder's Delivery of Estimate

- C2.1 As soon as practicable and in any event not more than 15 Business Days after receipt of a Change Order Enquiry, or such longer period as the Parties acting reasonably mutually agree, Design Builder shall deliver to the City an Estimate prepared in accordance with and meeting the requirements of Section C3 of this Schedule 17.
- C2.2 If Design Builder is of the reasonable opinion that the accuracy of the Estimate will benefit from certain third party design work or third party detailed cost estimating (excluding design work or detailed cost estimating done by the subcontractors listed in Schedule 6 – Subcontractors and Key Individuals) (the “**Third Party Input**”), Design Builder may propose to the City that the Third Party Input be arranged by Design Builder at the City's expense.
- C2.3 If the City gives its written agreement to such proposal, which written agreement may be expressly subject to any terms and conditions that the City deems appropriate, then such Third Party Input expenses shall be paid by the City whether or not the Change Order Enquiry is ultimately withdrawn, or deemed to have been withdrawn, by the City. In deciding to give its written agreement, the City shall give consideration to the reasonableness of the Third Party Input expenses and the reasonableness of the assurances given by Design Builder that the sum of the Estimate with the Third Party Input plus the Third Party Input expenses may be materially less than an Estimate without the Third Party Input.
- C2.4 If the City has issued a Change Order Enquiry and the City and Design Builder have not been able to reach agreement on the Estimate and, if applicable, an adjustment to the Project Schedule or Contract Price, then adjustments to the Estimate and the Project Schedule, the Parties shall resolve the disagreement in accordance with the process set out in Schedule 7 – Dispute Resolution Procedure, having regard to the manner in which value and payment are determined in Sections E1.1(a) and E1.2 of this Schedule 17.

C3. Estimate Requirements

- C3.1 The Estimate shall include such of the following information as is applicable, sufficient to demonstrate to the City's reasonable satisfaction:
- (a) the steps Design Builder will take to implement the Change Order, in such detail as is reasonable and appropriate in all the circumstances, including a description of the required changes to the Project Management Plan as a result of the impact to the Lands, environment, safety, stakeholders, risk, quality, etc.;
 - (b) any impact on the Scheduled Substantial Completion Date and any impact on the Project Schedule by submitting a written Time Impact Analysis as set out in Section C4;

- (c) the payment amounts for the new Progress Payment Item to add to Schedule 9 – Progress Payments, to which payment for the completion of the Change Order will apply;
- (d) any subcontractors required in addition to or in substitution for those listed in Schedule 6 – Subcontractors and Key Individuals;
- (e) the change in Contract Price based on the estimated Eligible Costs in accordance with the Cost Element Allocation Tables in Schedule 8 - Prices attributable to the Change Order;
- (f) any permits that are required to be obtained or amended attributable to the Change Order, and the estimated time for obtaining or amending same;
- (g) the proposed methods of certification of any Technical Requirements required by the Change Order if not currently contemplated within the provisions of the Design Build Agreement; and
- (h) any other impact of the Change Order on the Design Build Agreement,

in each case, together with such supporting information and justification as is reasonably required.

C3.2 In preparing an Estimate, Design Builder shall include sufficient information to demonstrate that:

- (a) Design Builder has used commercially reasonable efforts, including the use of invitational tenders or competitive tenders if appropriate or required, to oblige its subcontractors to minimize any increase in costs and to maximize any reduction in costs;
- (b) the full amount of any and all expenditures that have been reduced or avoided have been taken into account and applied in total to reduce the amount of all Change Order costs;
- (c) Design Builder has mitigated or will mitigate the impact of the Change Order, including on the Project Schedule for completion of the Project;
- (d) Design Builder will perform all work associated with a Change Order in accordance with the scheduling requirements with respect to Design Builder's access to the Lands described in Schedule 18 – Technical Requirements, if applicable; and
- (e) Design Builder is in compliance with all Applicable Law with respect to invitational tenders, quotations or competitive tenders.

C3.3 Design Builder shall use commercially reasonable efforts to obtain the best value for money when procuring any work, services, supplies, materials or equipment required by the Change Order and shall use commercially reasonable efforts to comply with prevailing Good Industry Practice in relation to any such procurement to a standard no less than Design Builder would apply if all costs incurred were to its own account.

- C3.4 As soon as practicable, and in any event not more than 15 Business Days after the City receives an Estimate, including any consequential changes to the Estimate resulting from a modification, Design Builder and the City shall discuss and seek to agree on the Estimate and, if applicable, an adjustment to the Project Schedule and/or Contract Price.
- C3.5 The City may modify a Change Order Enquiry in writing, at any time prior to the agreement between the Parties referred to in Section (e) in which case Design Builder shall, 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 mutually agree, notify the City in writing of any consequential changes to the Estimate and, if applicable, to an adjustment to the Project Schedule and/or Contract Price.

C4. Time Impact Analysis

- C4.1 When changes or delays are anticipated as a result of a Change Order, Design Builder shall submit a written time impact analysis (“**Time Impact Analysis**”) to the City with the Estimate illustrating the influence of the Change Order on the Scheduled Substantial Completion Date and the Project Schedule.
- C4.2 The Time Impact Analysis shall include a fragment network analysis (fragnet), demonstrating how Design Builder proposes to perform the Change Order including:
- (i) a listing of activities required to execute the Change Order including any required tendering process;
 - (ii) how the Design Builder proposes to incorporate the Change Order into the critical path and
 - (iii) an analysis demonstrating the time impact based on the following:
 - (i) the date that Design Builder was authorized to proceed with the Change Order or anticipates the issuance of authorization;
 - (ii) the status of design and construction at that point in time, specifically relating to the critical path; and
 - (iii) the event time computation of all affected activities based on the latest updated copy of the Project Schedule or as adjusted by mutual agreement.
- C4.3 Time extensions will be granted only to the extent that the Time Impact Analysis can demonstrate that the Change Order affects the critical path, either by extending activities on the critical path or changing the activities that become part of the critical path, such that the Scheduled Substantial Completion Date is delayed.
- C4.4 In cases where Design Builder does not submit a Time Impact Analysis with an Estimate, it is mutually agreed that the potential Change Order has no time impact

on the Scheduled Substantial Completion Date and no time extension will be granted.

C4.5 Failure to provide a Time Impact Analysis with an Estimate will disallow Design Builder from claiming compensation from the City for delays to the Scheduled Substantial Completion Date from the Change Order.

C4.6 Upon mutual agreement by both Parties, fragnets illustrating the influence of Change Orders shall be incorporated into updates of the Project Schedule.

C4.7 When an event occurs, the Design Builder shall submit a written Time Impact Analysis to the City illustrating the influence of the event on the Scheduled Substantial Completion Date and the Project Schedule within 10 days of the event.

C5. Design Builder Grounds for Objection

C5.1 Design Builder may only refuse to deliver an Estimate if Design Builder can demonstrate within the period for delivery of an Estimate that:

- (a) the proposed Change Order would have a material and adverse effect on the performance of the Work (except those aspects of the Work which have been specified as requiring amendment in the Change Order Enquiry) in a manner not compensated pursuant to this Schedule 17;
- (b) the proposed Change Order would, if implemented, alter aspects of the Work to beyond the qualifications of Design Builder;
- (c) the implementation of the Change Order would be a departure from Good Industry Practice;
- (d) the proposed Change Order would, if implemented, result in a change in the essential nature of the Infrastructure;
- (e) the implementation of the proposed Change Order would be contrary to Applicable Law; or
- (f) the proposed Change Order would, if implemented, render the insurance policies required under this Design Build Agreement void or voidable, unless the City agrees to provide replacement security satisfactory to Design Builder, acting reasonably.

C5.2 If Design Builder refuses to provide an Estimate on the grounds set out in Section C5.1, Design Builder shall, within the period for delivery of an Estimate specified or agreed pursuant to Section C2.1, deliver to the City a written notice specifying the grounds upon which Design Builder rejects the Change Order and the details thereof.

SECTION D CHANGE ORDER DIRECTIVE PROCESS

D1. Initiating a Change Order Directive

D1.1 At any time and from time to time (including whether or not the City has made a Change Order Enquiry, or Design Builder fails to provide an Estimate, or an Estimate is not promptly agreed upon by the Parties, or there is a Dispute), if the City wishes to proceed immediately with a Change Order the City shall issue a Change Order Directive. The Change Order Directive shall describe the Change Order with sufficient detail to enable Design Builder to prepare an Estimate and to proceed immediately with the work associated with the Change Order.

D1.2 The Change Order Directive will:

- (a) describe the proposed Change Order with sufficient detail to enable Design Builder to prepare an Estimate;
- (b) detail Design Build Agreement section additions or deletions;
- (c) indicate the method of adjustment in the Contract Price resulting from the Change Order determined by one or more of the following methods:
 - (i) by estimate in a lump sum;
 - (ii) by the unit prices and methods of measurement as set out in the Design Build Agreement or subsequently agreed upon; and
 - (iii) by the actual cost of the change in Work to the Design Builder plus a fixed fee and;
- (d) indicate the proposed Payment Item to add to Schedule 9 – Progress Payments, to which payment for the completion of the Change Order will apply.

D1.3 If the City would be required by Applicable Law to require Design Builder to seek invitational tenders or to competitively tender any contract in relation to the proposed Change Order, then the City may include in the Change Order Directive the requirement that Design Builder must seek and evaluate invitational tenders or quotations, or seek and evaluate competitive tenders, in relation to the Change Order. For certainty, the Design Builder's Estimate may include, *inter alia*, changes due to impacts on the Scheduled Substantial Completion Date, the Project Schedule and changes in the Contract Price resulting from the aforesaid requirement to seek invitational tenders or competitively tender any contract in relation to the proposed Change Order.

D2. Proceeding with Work

D2.1 Design Builder will proceed to immediately implement the work associated with the Change Order including the appropriate method of procurement, if applicable, upon receipt of the Change Order Directive.

D3. Design Builder Grounds for Objection

D3.1 Design Builder may only refuse to deliver an Estimate if Design Builder can demonstrate within the period for delivery of an Estimate that:

- (a) the proposed Change Order would have a material and adverse effect on the performance of the Work (except those aspects of the Work which have been specified as requiring amendment in the Change Order Directive) in a manner not compensated pursuant to this Schedule 17;
- (b) the proposed Change Order would, if implemented, alter aspects of the Work to beyond the qualifications of Design Builder;
- (c) the implementation of the Change Order would be a departure from Good Industry Practice;
- (d) the proposed Change Order would, if implemented, result in a change in the essential nature of the Infrastructure;
- (e) the implementation of the proposed Change Order would be contrary to Applicable Law; or
- (f) the proposed Change Order would, if implemented, render the insurance policies required under this Design Build Agreement void or voidable, unless the City agrees to provide replacement security satisfactory to Design Builder, acting reasonably.

D3.2 If Design Builder refuses to provide an Estimate on the grounds set out in Section D3.1, Design Builder shall, within the period for delivery of an Estimate specified or agreed pursuant to Section D4.1, deliver to the City a written notice specifying the grounds upon which Design Builder rejects the Change Order and the details thereof.

D4. Design Builder's Delivery of Estimate

D4.1 If Design Builder has not previously done so, Design Builder shall:

- (a) as soon as practicable and in any event not more than 15 Business Days after the issuance of the Change Order Directive, or such longer period as the Parties acting reasonably mutually agree, provide an Estimate to the City prepared in accordance with and meeting the requirements of Section C3 of this Schedule 17; and
- (b) as soon as practicable, and in any event not more than 15 Business Days after the City receives an Estimate or such longer period as the Parties acting reasonably mutually agree, Design Builder and the City shall discuss and seek to agree on the Estimate and, if applicable, an adjustment to the Project Schedule or Contract Price.

D4.2 If the City has issued a Change Order Directive and the City and Design Builder have not been able to reach agreement on the Estimate and, if applicable, an adjustment to the Project Schedule or Contract Price, then adjustments to the Estimate and the Project Schedule, the Parties shall resolve the disagreement in accordance with the process set out in Schedule 7 – Dispute Resolution Procedure, having regard to the manner in which value and payment are determined in Sections E1.1(a) and E1.2 of this Schedule 17.

SECTION E VALUATION OF CHANGE ORDER

E1.1 The work attributable to the Change Order shall be valued and payment to Design Builder shall be determined as follows:

(a) for the work associated with the Change Order that was not part of a competitive tender, including design work that was required for the competitive tender, that portion of the work associated the Change Order (the “**Own Forces Work**”) shall be valued as the total Eligible Cost for the Own Forces Work, plus the allowable Corporate Overhead and Profit rate in accordance with Schedule 8 – Prices for the Own Forces Work; or

E1.2 if the City has required Design Builder to seek and evaluate competitive tenders for the work associated with the Change Order, then for the work associated with the Change Order that is to be performed by a subcontractor of Design Builder not identified in Schedule 6 – Subcontractors and Key Individuals (the “**Subcontractor Work**”) pursuant to a contract between Design Builder and such subcontractor arising from the awarding of the competitive tender, that portion of the Change Order corresponding to the Subcontractor Work shall be valued as the amount of the accepted bid or tender plus, for Design Builder’s work (including without limitation direct costs, indirect costs, overhead and profit) on the Subcontractor Work, the allowable Corporate Overhead and Profit rate in accordance with Schedule 8 – Prices of the amount of the accepted bid or tender.

E2. CHANGE ORDER CONFIRMATION

E2.1 As soon as practicable, and in any event not more than 10 Business Days (unless an extension is agreed to by Design Builder, acting reasonably):

(a) after the date the Estimate, and, if applicable, an adjustment to the Project Schedule or Contract Price; or

(b) after the date the City delivers to Design Builder a Change Order Enquiry with details as per Section C1.4, the City shall either provide a Change Order Confirmation; or withdraw the Change Order Enquiry or Change Order Directive by written notice to Design Builder.

E2.2 If the City does not provide a Change Order Confirmation within the time frames set out in Section E2.1 then the Change Order Enquiry or Change Order Directive shall be deemed to have been withdrawn.

- E2.3 If a Change Order Directive is withdrawn, Design Builder shall be compensated for all Work, irrevocable commitments and other reasonable costs made under the Change Order Directive. The amount will be invoiced by Design Builder with sufficient justification of such costs and will be paid by the City.
- E2.4 If the City has required Design Builder to seek and evaluate invitational tenders or to seek and evaluate competitive tenders in relation to the Change Order and the City either withdraws or is deemed to have withdrawn the Change Order Enquiry, the actual costs necessarily and properly incurred by Design Builder directly attributable to the invitational or competitive tendering process, including any design cost, as the parties agree, will be invoiced by Design Builder with sufficient justification of such costs and will be paid by the City.

SECTION F ISSUANCE OF CHANGE ORDER

F1. Change Order

- F1.1 As soon as practicable after the City has provided the Change Order Confirmation, the Parties shall execute the Change Order.
- F1.2 Design Builder shall as soon as practicable thereafter, take all actions necessary to implement the executed Change Order.
- F1.3 A Change Order Confirmation is not a Change Order. For clarity, a Change Order is the only document that amends the Design Build Agreement.