

APPENDIX 12

OWNER CHANGE PROCEDURE

1.1 Owner Changes

The provisions of this Appendix 12 shall apply with respect to any Owner Change.

1.2 Change Request

When the Owner desires to initiate an Owner Change, the Owner will issue a change request (each, a “**Change Request**”) informing Developer of the proposed Owner Change, and requesting a Preliminary Change Estimate for such change.

1.3 Delivery of Preliminary Change Estimate

As soon as practicable and in any event within thirty (30) days after receipt of a Change Request, or such longer period as the Parties agree acting reasonably, Developer shall prepare and deliver to the Owner a preliminary change estimate (each, a “**Preliminary Change Estimate**”) for the proposed Owner Change described in the Change Request. The obligation of Developer to provide a Preliminary Change Estimate is not Extra Work and shall not entitle Developer to any additional monetary compensation, time extension or other relief. Developer shall be responsible for any additional schedule impact and costs to the Owner caused by its failure to submit a Preliminary Change Estimate within the prescribed time period; provided that (a) the Owner shall act reasonably in agreeing to an extension of the prescribed time period therefor, taking into account the scope of such request and the availability of required information, and (b) any delays in the Work attributable to Developer’s failure to respond in the prescribed time period shall be deemed not to exceed the actual period of time beyond the prescribed time period by which Developer failed to submit the Preliminary Change Estimate.

1.4 Content of Preliminary Change Estimate

A Preliminary Change Estimate shall include:

- (a) A description of the proposed Owner Change;
- (b) A comparison of the scope of the Work as a result of the proposed Owner Change as compared to the scope prior to the Owner Change, including detailed description of the impacts on the D&C Work, the O&M Services and the Concessions Program;
- (c) A detailed description of any proposed adjustments to the Project Schedule, including to any Completion Deadline, required as a result of any corresponding Relief Event Change Delay;

- (d) If compensation is sought under Section 11.4 of the Agreement, any impact of the Change Delay on: (a) the Project Debt draw down schedule (if applicable), funding and release of reserves, financing costs and debt service profile (including debt interest payments due and accrual of interest); and (b) the Committed Equity Investment draw down schedule, Developer's dividend profile and Equity IRR, in each case to the minimum extent required for Developer to avoid breaching its minimum debt covenants under the Funding Agreements as a result of the Change Delay while maximizing Equity IRR, taking into account the compensation sought under Section 11.4.1;
- (e) A detailed, itemized estimate of all Base Direct Costs, the applicable Mark-ups, and, if applicable, any amounts claimed under Section 11.3.3.1.2 or 11.3.3.1.3 and Section 11.4 of the Agreement, necessary for and directly associated with the proposed Owner Change;
- (f) An estimate of the cost savings (inclusive of mark-ups), if any, resulting from the proposed Owner Change, including reductions in direct labor, material and equipment, site overhead and home office overhead, operations and maintenance, and financing costs associated with the proposed Owner Change;
- (g) An estimate of increases or decreases to Concessions Revenue and/or Non-Concessions Revenue;
- (h) Where relief is sought under Section 11.3.1 of the Agreement, the effect of the proposed Owner Change on Developer's ability to perform any of its obligations under the Contract Documents that would otherwise result in accrual of Noncompliance Point(s), Noncompliance Instances, assessment of monetary deductions under Appendix 10 of the Agreement, or occurrence of a Developer Default, in each case including details of the relevant obligations, the effect on each such obligation, the likely duration of that effect and the specific relief sought;
- (i) A description of any additional consents or approvals required, including amendments, if any, of any Governmental Approvals required to implement the proposed Owner Change;
- (j) A detailed description of the steps Developer will take to implement the proposed Owner Change, including measures that Developer will take to mitigate the costs, delay and other consequences of the proposed Owner Change;
- (k) A proposed revised Financial Model reflecting the information described in this Section 1.4; and
- (l) Any consequential amendments required to the Contract Documents.

1.5 Agreement on Owner Change

Following receipt by the Owner of a Preliminary Change Estimate prepared in accordance with Section 1.4 of this Appendix 12:

- (a) As soon as practicable, and in any event within 15 Business Days after the Owner receives a Preliminary Change Estimate, or such longer period as the Parties agree acting reasonably, the Owner will deliver to Developer any requests for clarifications or amendments, and the Parties' Authorized Representatives will meet and use all reasonable efforts to agree to a final change estimate ("**Final Change Estimate**"), including valuation of the Owner Change, any time extension or any other relief, the revised Financial Model, and any other information required to be included in the Preliminary Change Estimate.
- (b) The Owner may, by notice in writing, modify or abandon a Change Request at any time prior to mutual execution of a Change Order in accordance with Section 1.6 of this Appendix 12. Upon receipt of any notice to modify a Change Request, Developer 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 may agree acting reasonably), submit to the Owner a revised Preliminary Change Estimate reflecting the modification.

1.6 Change Order

- (a) An Owner Change will become effective upon mutual execution by the Parties' Authorized Representatives of a written change order (the "**Change Order**"). The Change Order shall be in a form provided by the Owner, and shall set forth:
 - (i) Any additional compensation to which Developer is entitled under Section 11.3.3 of the Agreement and the method and timing of payment of the same by the Owner;
 - (ii) Any time extension to which Developer is entitled under Section 11.3.2 of the Agreement; and
 - (iii) Any relief to which Developer is entitled under Section 11.3.1 of the Agreement,

A copy of the Final Change Estimate shall be attached as an appendix to the Change Order.

- (b) Subject to Section 1.8 of this Appendix 12, Developer shall not proceed with an Owner Change prior to receiving a signed Change Order from the Owner.
- (c) A Change Order issued in accordance with this Section 1.6 will be binding upon the Owner and Developer. Upon mutual execution by the Parties of

a Change Order, Developer shall promptly proceed to implement the City Change.

1.7 Disagreement on Final Change Estimate

If the Parties do not agree on a Final Change Estimate and mutually execute a Change Order, then the Owner may:

- (a) Elect not to proceed with the Owner Change described in the Change Request; or
- (b) Issue a Change Directive.

1.8 Change Directive

- (a) Notwithstanding any other provision of the Agreement, the Owner may, at any time, issue a change directive (each, a “**Change Directive**”) to Developer, signed by the Owner’s Authorized Representative, directing Developer to implement an Owner Change.
- (b) The Owner may issue a Change Directive at any time, in its sole discretion, including: (i) in the absence of a Change Request; (ii) at any time following issuance of a Change Request; (iii) if Developer fails to provide a Preliminary Change Estimate; (iv) if a Final Change Estimate or Change Order is not promptly agreed upon by the Parties; or (v) if there is a Dispute in relation to a Change Directive, Preliminary or Final Change Estimate or Change Order (including a Dispute as to whether there is an Owner Change).
- (c) Upon receipt of a Change Directive:
 - (i) Developer shall promptly sign the Change Directive, return it to the Owner, and proceed with implementing the Owner Change in accordance with the Change Directive and the Contract Documents, except as otherwise provided in the Change Directive;
 - (ii) If Developer has not previously done so, Developer shall, within 30 days after the issuance of the Change Directive, deliver to the Owner a Preliminary Change Estimate in accordance with Sections 1.3 and 1.4 of this Appendix 12, and the Parties shall subsequently follow the procedures and provisions set forth in Sections 1.5 and 1.6 of this Appendix 12.
- (d) Following issuance of a Change Directive and pending mutual execution of a Change Order, the Owner will make progress payments to Developer for its Direct Costs incurred in implementing the Owner Change, as reasonably demonstrated by Developer in writing from time to time, or upon the Owner’s request, with the substantiating records and documentation referred to in Section 1.9 of this Appendix 12. If Developer disagrees with the amount of Direct Costs to which it is entitled under this

Section 1.8(d), Developer may refer the matter to the Dispute Resolution Procedures, and Developer shall, without prejudice to its rights with respect to such Dispute, continue to implement the Owner Change as directed in the Change Directive.

- (e) The Owner may, by notice in writing, modify or abandon the Change Directive at any time prior to mutual execution of a Change Order in accordance with Section 1.6 of this Appendix 12, provided that if the Owner abandons the Change Directive, it shall have paid Developer for work completed pursuant to the Change Directive in accordance with Section 1.8(d) of this Appendix 12.

1.9 Mandatory Records

As a condition to Developer's rights to any additional compensation, time extension or other relief with respect to an Owner Change, Developer shall keep daily detailed and accurate records itemizing each element of cost and shall provide substantiating records and documentation, including time cards, purchase orders, invoices and other customary industry documentation.