

SCHEDULE 5

REVIEW PROCEDURE

SECTION A GENERAL

A1. Capitalized Terms

A1.1 Capitalized terms used in this Schedule 5 have the meanings set out in the Project Agreement, unless otherwise expressed in this Schedule 5.

SECTION B SUBMITTALS

B1. Submittals Schedule and Compliance with the Project Agreement

B1.1 Prior to the commencement of the review procedure set out in Section C of this Schedule 5 (the “**Review Procedure**”), Project Co shall provide a schedule for submission by Project Co to the City of,

(a) all submittals, schedules, reports and plans, including all supporting documentation thereto, required to be submitted by Project Co in accordance with the Project Agreement; and

(b) all detailed designs, Project Co’s Management Systems and Plans and Project Co’s Design and Construction Schedule not submitted as part of, or amended since, Project Co’s Proposal, including all supporting documentation thereto;

(together, the “**Submittals**”).

B1.2 This schedule for submission of Submittals (the “**Submittals Schedule**”) shall take into account that more than one submission will likely be required for each Submittal, including at least three submissions, one each at the 60% Design Development, 90% Design Development and Issued for Construction stage, for each design package.

B1.3 The Submittals Schedule shall illustrate that any design and plan Submittals are reasonably spread over the entire design period and that the schedule is reasonable to achieve. The Submittals Schedule shall ensure that the sequence of submission of Submittals is done in a logical manner.

B1.4 Subject to any Change Orders, Project Co shall prepare all of the Submittals, including all detailed designs and plans necessary for the construction of the Project or the performance of the OMR Services in accordance with the Project Agreement.

B1.5 Project Co shall submit Submittals in accordance with reasonable instructions provided by the City which may include submission via electronic transmission.

B2. Deviation from Submittals Prohibited

B2.1 Subject to any Change Order, Submittals submitted to the City in accordance with this Schedule 5 shall not be departed from in the Design and Construction or the performance of the OMR Services. However, in the event that Project Co proposes that a change to any Submittal is required due to unforeseen circumstances beyond Project Co’s control or in

order to comply with the Project Agreement, then Project Co shall as soon as practicably possible submit a revised Submittal to the City in accordance with this Schedule 5.

B3. Submission of Submittals

B3.1 Subject to Section B3.4, Project Co shall not commence or permit the commencement of construction of the applicable portion of the Design and Construction or the performance of the applicable portion of the OMR Services until 10 Business Days following the City's receipt of the Submittal relevant to and required in respect of such portion of the Design and Construction or portion of the OMR Services. Neither comment nor failure to provide comment by the City shall relieve against or excuse any failure by Project Co to carry out the Design and Construction or perform the OMR Services.

B3.2 If any Submittal related to the Design and Construction, including, without limitation, Project Co's Design and Construction Schedule, does not comply with or satisfy the Technical Requirements or materially deviates from the subject matter of Schedules 2, 3, 4, 13, 18 or 19 of the Project Agreement, Project Co shall notify the City as soon as is reasonably practicable of any such failure to comply by making a written submission (the "**Non-Compliance Submission**") through the Review Procedure.

B3.3 The Non-Compliance Submission shall contain the following information:

- (a) the circumstances in which such non-compliance with the Technical Requirements or the material deviation from the subject matter of Schedules 2, 3, 4, 13, 18 or 19 to the Project Agreement occurred;
- (b) explanation of the causes for such non-compliance and, where applicable, for any delay in providing notification; and
- (c) the measures, if any, that Project Co proposes to adopt in order to rectify such non-compliance.

B3.4 Project Co shall not commence or permit the commencement of construction of the applicable portion of the Design and Construction until the City's receipt of a 90% design Submittal, including in respect of the Early Access Works. For clarity, Project Co shall not commence or permit the commencement of construction of the applicable portion of the Design and Construction following submission of a 60% design Submittal, notwithstanding that such Submittal may be endorsed as "Received".

SECTION C REVIEW PROCEDURE

C1. Review Procedure

C1.1 Project Co shall provide to the City all Submittals in accordance with the requirements of this Project Agreement for review by the City in accordance with the Review Procedure.

C2. The City's Review Resources

C2.1 The City may, in reviewing any matter or Submittal in accordance with this Review Procedure, refer such matter or Submittal to other Winnipeg government departments, or any of the City's servants, agents, advisers, consultants, contractors or subcontractors.

C3. City's Responses to Project Co's Submittals

- C3.1 Subject to Sections C3.2 and C3.3, the City shall, as soon as is practicable and within 10 Business Days of receipt of a Submittal (or such longer time as may be prescribed in this Project Agreement or as the Parties may agree), return a response on the relevant submission endorsed "Received" or "Comments" or "Observations", as is appropriate.
- C3.2 If the City has referred a Submittal or a portion of a Submittal to another entity or person pursuant to Section C2.1, and, as a result, the City is delayed in returning a response on the relevant Submittal in the time-frame set out in Section C3.1, the City shall, as soon as reasonably possible, notify the Project Co Representative of such delay.
- C3.3 The City shall return a response on the relevant submission endorsed "Received" or "Comments" or "Observations", as is appropriate, as soon as is practicable and within the following timeframes:
- (a) 20 Business Days following receipt of a 60% design Submittal in relation to the Design and Construction other than the Early Access Works;
 - (b) 10 Business Days following receipt of a 90% design Submittal in relation to the Design and Construction other than the Early Access Works;
 - (c) 10 Business Days following receipt of an IFC Submittal in relation to the Design and Construction other than the Early Access Works;
 - (d) 15 Business Days following receipt of an 60% design Submittal in relation to the Early Access Works;
 - (e) 10 Business Days following receipt of an 90% design Submittal in relation to the Early Access Works; and
 - (f) 10 Business Days following receipt of an IFC Submittal in relation to the Early Access Works.

C4. Submittal Endorsed "Received"

- C4.1 In the case of Submittal documents or proposed courses of action endorsed "Received" by the City, Project Co may commence or permit the commencement of the applicable portion of the Design and Construction or the performance of the applicable portion of the OMR Services related to the Submittal document or proposed course of action endorsed "Received", when such endorsement has been received by Project Co from the City.

C5. Submittal Endorsed "Comments"

- C5.1 Subject to Section C11 of this Schedule 5, Project Co shall revise and resubmit any Submittal documents or proposed courses of action to which an endorsement of "Comments" has been attached by the City taking into account the substance of the "Comments" and indicating either:
- (a) how the Technical Requirements were met or Schedules 2, 3, 4, 13, 18 or 19 to the Project Agreement were materially complied with in the original Submittal; or

- (b) how the revised Submittal now meets the Technical Requirements or materially complies with Schedules 2, 3, 4, 13, 18 or 19 to the Project Agreement.

C6. Scope of the City’s “Comments”

C6.1 When the City provides “Comments” regarding any Submittal document or course of action submitted by Project Co, such “Comments” may relate to Project Co’s proposed Submittal, including any schedule, report, plan, design, construction activity, construction schedule, construction materials, OMR Services or materials related to the OMR Services,

- (a) not likely achieving compliance with the Technical Requirements; or
- (b) with respect to the construction schedule, not being reasonable in view of the status of the Project;
- (c) as applicable, and such “Comments” may require Project Co to revisit, revise and resubmit to the City the Submittal document or course of action.

C7. Submittal Endorsed “Observations”

C7.1 Subject to Section C11 of this Schedule 5, Project Co shall revise and resubmit any Submittal documents or proposed courses of action or provide clarification or additional information to which an endorsement of “Observations” has been attached by the City taking into account the substance of the “Observations” and confirming either:

- (a) how the Technical Requirements were met or Schedules 2, 3, 4, 13, 18 or 19 to the Project Agreement were materially complied with in the original Submittal; or
- (b) how the revised Submittal now meets the Technical Requirements or materially complies with Schedules 2, 3, 4, 13, 18 or 19 to the Project Agreement.

C7.2 Project Co shall be entitled to commence or permit the commencement of the applicable portion of the Design and Construction or the performance of the applicable portion of the OMR Services related to the Submittal document or proposed course of action endorsed “Observations”, when such endorsement has been received by Project Co from the City.

C8. Scope of the City’s “Observations”

C8.1 When the City provides “Observations” regarding any Submittal document or course of action submitted by Project Co, such “Observations” may relate to Project Co’s proposed Submittal, including any schedule, report, plan, design, construction activity, construction schedule, construction materials, OMR Services or materials related to the OMR Services,

- (a) likely achieving compliance with the Technical Requirements;
- (b) or, regarding the construction schedule, being reasonable in view of the status of the Project;

- (c) as applicable, but such “Observations” may require Project Co to provide clarification or additional information.

C9. Response by the City

- C9.1 If the City does not return a Project Co’s Submittal document (including any resubmitted Submittal document) within the timeframe set out in Section C3.1, then the City shall be deemed to have returned that Submittal document to Project Co marked “Received”.
- C9.2 For clarity, no response by the City, including any endorsement of “Received”, “Comments”, or “Observations” on any Submittal, and no failure by the City to provide comment, response, or participate in any manner in respect of the Review Procedure shall,
 - (a) relieve Project Co from Project Co’s exclusive responsibility to ensure that the Project complies with the Project Agreement;
 - (b) excuse any failure by Project Co to carry out the Design and Construction or perform the OMR Services in accordance with the Project Agreement; or
 - (c) estop the City from asserting any non-compliance with the Project Agreement.

C10. Further Information Requested by the City

- C10.1 If the City so requires, Project Co shall submit any further or other information, data and documents (including without limitation, details of calculations and comments of Project Co’s design team members) that may be reasonably required for a full appreciation of any Submittal contemplated above and its implications. Project Co shall take all such steps as may be reasonably required to satisfy the City that the proposed document or proposed course of action complies with the Project Agreement or is appropriate in the circumstances.

C11. Disagreement over Comments

- C11.1 Should Project Co disagree with any such comment permitted by this Schedule 5, the Parties shall first use reasonable commercial efforts to resolve their disagreement through negotiation, failing which either Project Co or the City may refer the matter to the Independent Certifier pursuant to Section D of this Schedule 5.

SECTION D INDEPENDENT CERTIFIER’S PROCEDURE

D1. Engaging the Independent Certifier

- D1.1 Pursuant to Section C11 of this Schedule 5, failing the resolution by agreement of any dispute between the Parties relating to or arising out of the Submittals, or the Technical Requirements, that dispute shall in the first instance be referred to the Independent Certifier for the Independent Certifier’s interpretations of the Technical Requirements in relation to Design and Construction for immediate interim resolution.
- D1.2 Pursuant to Sections I1.2(e), N1.6 or O2.6 of the Project Agreement, failing the resolution by agreement of any dispute between the Parties relating to or arising out of the date that

Substantial Completion would have been achieved but for a Change Order, the occurrence of damage, a Relief Event or a Force Majeure Event, as applicable, and the revised date on which Substantial Completion should be scheduled to be achieved following the occurrence of such event, that dispute shall in the first instance be referred to the Independent Certifier for the Independent Certifier's determination having regard to the status of the Project at the time that the event occurs, the nature of the event and its impact on the Project and Project Co's Design and Construction Schedule.

- D1.3 Failing a resolution by agreement, either Party may request a meeting with the Independent Certifier. As soon as is practicable after the Independent Certifier receives a request for such a meeting but in any event no later than five Business Days after receiving the request, the Independent Certifier shall call the representatives of the Parties together at the Lands or any other place the Independent Certifier determines most appropriate.
- D1.4 At a meeting requested in accordance with Section D1.3 of this Schedule 5, both Parties will outline the issue or issues in dispute to the Independent Certifier.
- D1.5 Should the Independent Certifier fail to call such a meeting within the timeframes specified in Section D1.3 of this Schedule 5, the Party requesting the meeting, at its option and in accordance with Section B4 of Schedule 7 - Dispute Resolution Procedure, may initiate arbitration proceedings regarding the issues in dispute.

D2. Independent Certifier's Actions

- D2.1 Upon hearing the Parties' issues and reviewing any written materials either Party may have presented to the Independent Certifier in support of its position, the Independent Certifier shall immediately proceed to investigate the subject of the dispute with a view toward its resolution. The Independent Certifier shall be entitled to:
- (a) visit worksites;
 - (b) call for any further documentation required from the Parties; and
 - (c) consult with the Parties, and with the Parties' agreement, consult with any experts, technical or otherwise, that the Independent Certifier considers necessary to assist in the resolution of the dispute;
 - (d) The Independent Certifier shall conduct all such investigations and enquiries as a matter of urgency.

D3. The Independent Certifier's Conclusion

- D3.1 After giving due consideration to the points raised at the meeting provided for in Section D1.3 of this Schedule 5 with the Parties and to any additional investigations performed, and in any event no later than five Business Days after the date of such meeting, the Independent Certifier shall render a conclusion and shall deliver that conclusion verbally to the Parties (the "**Independent Certifier's Conclusion**"). The Independent Certifier's Conclusion shall specify the following:

- (a) the Independent Certifier's conclusion as to the proper interpretations of the Technical Requirements in relation to Design and Construction issues raised by the Parties, or the Independent Certifier's conclusion as to the date that Substantial Completion would have been achieved but for a Change Order, the occurrence of damage, a Relief Event or a Force Majeure Event, as applicable, and the revised date on which Substantial Completion should be scheduled to be achieved following the occurrence of such event, as applicable;
- (b) the Independent Certifier's reasons for the conclusions drawn; and
- (c) the effect of the Independent Certifier's conclusions on the future work to be performed in the completion of the Project.

D3.2 In making any such Independent Certifier's Conclusion, the Independent Certifier shall be deemed to be an expert and not an arbitrator.

D3.3 At either Party's request, the Independent Certifier will provide duplicate copies of a written account of the Independent Certifier's Conclusion to the Parties as soon as is practicable after delivering the verbal Independent Certifier's Conclusion.

D3.4 If the Independent Certifier fails to render an Independent Certifier's Conclusion within the timeframes specified in Section D3.1 of this Schedule 5, the Party requesting the meeting may, at its option, in accordance with Section B4 of Schedule 7 - Dispute Resolution Procedure, may initiate arbitration proceedings regarding the issues in dispute.

D4. Independent Certifier's Conclusion Disputed

D4.1 Subject to complying with any such Independent Certifier's Conclusion, either Party may, within five Business Days of receiving an Independent Certifier's Conclusion and in accordance with Section B4 of Schedule 7 - Dispute Resolution Procedure, initiate arbitration proceedings regarding the issues in dispute.

D5. Independent Certifier Not to Appear in Arbitration

D5.1 An Independent Certifier who has issued an Independent Certifier's Conclusion may not be retained by either Party and may not be called by either Party to give evidence with respect to the subject matter of the Independent Certifier's Conclusion in any subsequent arbitration or court proceeding to resolve the subject matter of the Independent Certifier's Conclusion, nor will either Party refer to or enter into evidence an Independent Certifier's Conclusion in such proceeding, unless required by Applicable Law or by a Court.

D6. Performance of Obligations

D6.1 Notwithstanding the existence of any dispute between the Parties, the City and Project Co will, to the extent not precluded by the matter in dispute, continue with the Project and the performance of their respective obligations under the Project Agreement (including the City's obligation to make any applicable payments to Project Co) without prejudice to the right to contest, dispute and challenge the relevant matter in accordance with the provisions of the Project Agreement.