

## 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 Design Build Agreement, unless otherwise expressed in this Schedule 5.

##### A2. Definitions

A2.1 In this Schedule 5, the following terms have the following meanings:

- (a) **“Blackout Review Period”** means the period from December 24 to January 2 in each calendar year that will not be considered Business Days with respect to the time-frames noted for review and/or response as set out in this Schedule 5;
- (b) **“Comment Resolution Sheet”** or **“CRS”** means the tracking sheet created for each Submittal with “Comments” and “Observations” from the City’s Submittal Review Procedure for Design Builder to address and resolve in accordance with Section D of this Schedule 5;
- (c) **“Comment Resolution Sheet Review Procedure”** or **“CRS Review Procedure”** means the review procedure for CRSs in accordance with Section C of this Schedule 5;
- (d) **“Submittal Review Procedure”** means the review procedure for Submittals in accordance with Section C of this Schedule 5; and
- (e) **“Submittal Schedule”** means the schedule for the submission of Submittals to the City in accordance with Section B2 of this Schedule 5.

##### A3. General

A3.1 The City will not review Submittals or CRSs during the Blackout Review Period. For clarity, these dates will not be included in the review time-frames outlined in this Schedule 5.

A3.2 Design Builder may submit a Submittal during the Blackout Review Period, however, the City will not begin its review in accordance with this Schedule 5 until the Blackout Review Period has ended.

- A3.3 The City may, in reviewing any Submittal or CRS in accordance with this Schedule 5, refer such Submittal or CRS to City departments, or any of the City’s employees, agents, advisers, consultants, contractors or subcontractors.
- A3.4 Should Design Builder disagree with any such comment permitted by this Schedule 5, the Parties shall resolve the disagreement in accordance with the process set out in Schedule 7 – Dispute Resolution.

## **SECTION B SUBMITTALS**

### **B1. General**

- B1.1 Design Builder shall prepare all Submittals in accordance with the Design Build Agreement.
- B1.2 Submittals provided for review in accordance with this Schedule 5 shall be submitted by Design Builder in accordance with Schedule 13 – Document Management System and reasonable instructions provided by the City.
- B1.3 Design Builder shall address and resolve any comments from the City’s Submittal Review Procedure to the satisfaction of the City, acting reasonably, in accordance with Section D of this Schedule 5.

### **B2. Submittal Schedule**

- B2.1 Prior to the commencement of the Submittal Review Procedure set out in Section C of this Schedule 5, Design Builder shall provide a Submittal Schedule for review by the City in accordance with this Schedule 5.
- B2.2 The information included in the Submittal Schedule shall be consistent with the Work Breakdown Structure developed in accordance with the Technical Requirements. The Submittal Schedule shall consider that more than 1 submission may be required for each Submittal. The number of submissions for each Submittal shall be in accordance with the Technical Requirements.
- B2.3 The Submittal Schedule shall illustrate that Submittals are reasonably spread over the entire Project, is reasonable to achieve, adheres to the City’s review periods as set out in Section C2.4 and adheres to the Blackout Review Period. The Submittal Schedule shall ensure the sequence of submission of Submittals is prepared in a logical manner. For example, preceding design elements should be submitted prior to subsequent design elements.
- B2.4 Design Builder shall update and resubmit the Submittal Schedule, as required, in conjunction with the monthly updates of the Project Schedule in accordance with the Technical Requirements.

B2.5 Failure by Design Builder to submit its Submittals in accordance with its most current Submittal Schedule, as found on the City’s DMS, shall result in a Payment Adjustment being assessed, in accordance with Schedule 14 – Payment Adjustments.

**B3. Deviation from Submittals Prohibited**

B3.1 The Works shall be undertaken in a manner consistent with the Submittals as reviewed by the City in accordance with this Schedule 5. However, in the event Design Builder proposes a change to any Submittal, due to:

- (a) non-compliance with the Technical Requirements and Design Build Agreement; or
- (b) unforeseen circumstances beyond Design Builder’s control,

then Design Builder shall as soon as practicably possible submit a revised Submittal to the City in accordance with this Schedule 5.

B3.2 If the revised Submittal is required due to Section B3.1(a), Design Builder shall notify the City, as soon as is reasonably practicable, of any such failure to comply with the Technical Requirements and Design Build Agreement by providing an NCR in accordance with Schedule 18 – Technical Requirements.

B3.3 Further to the information required for an NCR Plan as set out in Schedule 18 – Technical Requirements, the NCR Plan, as contemplated by Section B3.2, shall contain the following information:

- (a) the circumstances in which such Non-Conformance with the Technical Requirements or the material deviation from the subject matter of Schedule 2 – Design Builder’s Project Schedule, Schedule 3 – Design Builder’s Proposal Extracts, Schedule 4 – Design Builder’s Management Systems and Plans or to the Design Build Agreement occurred;
- (b) explanation of the causes for such Non-Conformance and, where applicable, for any delay in providing notification; and
- (c) the measures, if any, that Design Builder proposes to adopt in order to rectify such non-compliance.

**B4. Submittal Meetings**

B4.1 In addition to the Design Workshops described in the Technical Requirements, Design Builder shall, using reasonable efforts, cause its contractors, subcontractors, manufacturers, vendors and suppliers to, participate in pre-submittal meetings where requested by the City. The purpose of pre-submittal meetings will be to review the requirements and intent of the Technical Requirements and Design Builder’s design approach so as to facilitate an efficient Submittal Review Procedure.

B4.2 For the purpose of facilitating and expediting the review and revision of Submittals, the City and the Design Builder shall meet, as may be mutually agreed, to discuss and review any outstanding Submittals and CRS comments thereon.

**B5. Construction Commencement**

B5.1 Design Builder shall not commence or permit the commencement of construction of the applicable portion of the Work until the time-frames set out in Section C2.3 of this Schedule 5 following the City's receipt of the Submittal relevant to and required in respect of such portion of the Work. Neither comment nor failure to provide comment by the City shall relieve against or excuse any failure by Design Builder to carry out the Work.

B5.2 Design Builder shall not commence or permit the commencement of construction until achieving an endorsement of "Received" on the 90% Design Submittal construction package Design Builder intends on constructing, subject to meeting the Construction Commencement Conditions in Schedule 18 – Technical Requirements.

B5.3 For clarity, Design Builder shall not commence or permit the commencement of construction of the applicable portion of the Work following submission of a 30% Design Submittal or a 60% Design Submittal, notwithstanding that such Submittal may be endorsed as "Received".

**SECTION C SUBMITTAL REVIEW PROCEDURE**

**C1. General**

C1.1 Design Builder shall provide to the City all Submittals in accordance with the requirements of the Design Build Agreement for review by the City.

**C2. Submittal Response by the City**

C2.1 Subject to Sections C2.2 and C2.3 of this Schedule 5, the City will, as soon as is practicable from receipt of a Submittal (or such longer time as may be prescribed in the Design Build Agreement or as the Parties may agree), return a response on the relevant Submittal endorsed "Received" or "Comments" or "Observations", as is appropriate.

C2.2 If the City has referred a Submittal or a portion of a Submittal to another entity or person pursuant to Section A3.3 of this Schedule 5 and, as a result, the City is delayed in returning a response on the relevant Submittal in the time-frame set out in Section C2.3 of this Schedule 5, the City will, as soon as reasonably possible, notify Design Builder Representative of such delay.

C2.3 If, at any time, either or both of the following situations occur:

- (a) Design Builder submits an unreasonably large number or volume of

Submittals not reasonably anticipated by the current Submittals Schedule; or

- (b) a Submittal was, or Submittals were, received for review later than indicated in the current Submittals Schedule, such that the City cannot review the Submittal or Submittals within the time permitted in Section C2.4 of this Schedule 5,

then the City shall, within 5 Business Days following receipt of such Submittal or Submittals, provide Design Builder with a reasonable estimate of the time necessary for reviewing such Submittal or Submittals, which shall supersede the time-frames provided in Section C2.4 of this Schedule 5.

C2.4 The City will return a response on the relevant Submittal endorsed “Received” or “Comments” or “Observations”, as is appropriate, as soon as is practicable and within the following time-frames:

- (a) 20 Business Days following receipt of the complete 30% Design Submittal in relation to the Work;
- (b) 20 Business Days following receipt of a 60% Design Submittal in relation to the Work;
- (c) 20 Business Days following receipt of a 90% Design Submittal in relation to the Work;
- (d) 10 Business Days following receipt of an IFC Submittal in relation to the Work;
- (e) 10 Business Days following receipt of an NCR Plan in relation to a Non-Conformance;
- (f) 5 Business Days following receipt of a resubmission of any previously submitted Submittal; and
- (g) 15 Business Days for any other type of Submittal, unless otherwise indicated in the Technical Requirements.

C2.5 If the City does not return a Design Builder’s Submittal document (including any resubmitted Submittal document) within the time-frame set out in Section C2.3 of this Schedule 5, then the City will be deemed to have returned that Submittal document to Design Builder endorsed “Received”.

C2.6 If, at any time after assigning any endorsement to a Submittal, the City or Design Builder discovers any significant deficiencies or any failure to conform to the requirements of the Design Build Agreement, the City may revise the endorsement assigned to any affected Submittal. If the Parties agree, or if it is determined in accordance with Schedule 7 - Dispute Resolution, that the revised endorsement is

correct, Design Builder shall make all such corrections to the affected Submittals. No extension of time will be given, or additional compensation paid in respect of any such modification or resubmittal.

- C2.7 For clarity, neither a response by the City, including any endorsement of “Received”, “Comments” or “Observations” on any Submittal, nor failure by the City to provide a response or participate in any manner in respect of the Submittal Review Procedure shall:
- (a) relieve Design Builder from Design Builder’s exclusive responsibility to ensure that the Project complies with the Design Build Agreement;
  - (b) excuse any failure by Design Builder to carry out the Work in accordance with the Design Build Agreement; or
  - (c) estop the City from asserting any non-compliance with the Design Build Agreement.

**C3. Submittal Endorsed “Received”**

- C3.1 In the case of Submittals or proposed courses of action endorsed “Received” by the City, Design Builder may, subject to Section B5 of this Schedule 5, proceed or permit continuation of the applicable portion of the Work related to the Submittal document or proposed course of action endorsed “Received”, when such endorsement has been received by Design Builder from the City.

**C4. Submittal Endorsed “Observations”**

- C4.1 Subject to Section A3.4 of this Schedule 5, Design Builder shall revise and resubmit, in accordance with Section C4.3 of this Schedule 5, 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 Schedule 2 – Design Builder’s Project Schedule, Schedule 3 – Design Builder’s Proposal Extracts, or Schedule 4 – Design Builder’s Management Systems and Plans to the Design Build Agreement were materially complied with in the original Submittal;
  - (b) how the revised Submittal now meets the Technical Requirements or materially complies with Schedule 2 – Design Builder’s Project Schedule, Schedule 3 – Design Builder’s Proposal Extracts, or Schedule 4 – Design Builder’s Management Systems and Plans to the Design Build Agreement; or
  - (c) how the next Submittal will meet the Technical Requirements or materially comply with Schedule 2 – Design Builder’s Project Schedule, Schedule 3 –

Design Builder's Proposal Extracts, or Schedule 4 – Design Builder's Management Systems and Plans to the Design Build Agreement.

C4.2 Subject to Sections B5.2, B5.3 and D1.3, Design Builder shall be entitled to, commence or permit the commencement of the applicable portion of the Work related to the Submittal document or proposed course of action endorsed "Observations", when such endorsement has been received by Design Builder from the City.

C4.3 Design Builder shall resubmit an IFC Submittal when the City has endorsed the Submittal as "Observations". For clarity:

- (a) only if the complete 30% Design Submittal has been endorsed "Observations" shall Design Builder be allowed to proceed to a 60% Design Submittal;
- (b) only if a 60% Design Submittal has been endorsed "Observations" shall Design Builder be allowed to proceed to the 90% Design Submittal; and
- (c) only if a 90% Design Submittal has been endorsed "Observations" shall Design Builder be allowed proceed to the IFC Submittal, subject to Section B5.2 of this Schedule 5;

however, if an IFC Submittal has been endorsed "Observations" a resubmission of the IFC Submittal is required.

**C5. Scope of the City's "Observations"**

C5.1 When the City provides "Observations" regarding any Submittal from Design Builder, such "Observations" may relate to the Submittal:

- (a) likely achieving compliance with the Technical Requirements or other applicable provision in the Design Build Agreement;
- (b) deviating in a non-material manner from the previous Submittal; or
- (c) regarding the Project Schedule, being reasonable in view of the status of the Project,

but such "Observations" may require Design Builder to provide clarification, additional information, or a resubmission, as applicable.

**C6. Submittal Endorsed "Comments"**

C6.1 Subject to Section A3.4 of this Schedule 5, Design Builder 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 Schedule 2 – Design Builder’s Project Schedule, Schedule 3 – Design Builder’s Proposal Extracts, or Schedule 4 – Design Builder’s Management Systems and Plans were materially complied with in the original Submittal; or
- (b) how the revised Submittal now meets the Technical Requirements or materially complies with Schedule 2 – Design Builder’s Project Schedule, Schedule 3 – Design Builder’s Proposal Extracts, or Schedule 4 – Design Builder’s Management Systems and Plans.

**C7. Scope of the City’s “Comments”**

C7.1 When the City provides “Comments” regarding any Submittal from Design Builder, such “Comments” may relate to the Submittal:

- (a) not likely achieving compliance with the Technical Requirements or other applicable provision in the DBA, as determined by the City;
- (b) deviating in a material manner from the previous Submittal; or
- (c) with respect to the Project Schedule, not being reasonable in view of the status of the Project;

and such “Comments” shall require Design Builder to revisit, revise and resubmit the Submittal to the City.

**C8. Further Information Requested by the City**

C8.1 If the City so requests, Design Builder shall submit any further or other information, data and documents (including details of calculations and comments from members of the Design Team) that may be reasonably required for a full understanding of any Submittal contemplated in this Schedule 5 and its implications, within 10 Business Days of receipt of request from the City.

C8.2 Further to Section C8.1 of this Schedule 5, Design Builder 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 Design Build Agreement or is appropriate in the circumstances.

C8.3 Further to Section C8.2 of this Schedule 5, the time-frames set out in Section C2.3 of this Schedule 5 will be extended by the number of Business Days it takes for Design Builder to respond to the City’s request.

## **SECTION D COMMENT RESOLUTION SHEET REVIEW PROCEDURE**

### **D1. General**

- D1.1 The City will provide a CRS for each Submittal with all “Comments” and “Observations” from the City’s Submittal Review Procedure.
- D1.2 Design Builder shall submit the CRS responses in accordance with Schedule 13 – Document Management System and reasonable instructions provided by the City.
- D1.3 Design Builder shall respond, address and resolve all “Comments” and “Observations”, to the satisfaction of the City acting reasonably, prior to Design Builder proceeding with the applicable Work.
- D1.4 IFC Submittals shall not be sealed by Design Builder until all applicable “Comments” and “Observations” have been resolved and applicable CRS closed as per Section D3.1 of this Schedule 5. For clarity, all CRSs from the 30% Design Submittal, 60% Design Submittal, 90% Design Submittal and IFC Submittal must be closed prior to the IFC Submittal being sealed.

### **D2. Comment Resolution Sheet Response Time-Frames**

- D2.1 The City and Design Builder shall respond as soon as is practicable and within 10 Business Days of receipt of a CRS (or such longer time as may be prescribed in the Design Build Agreement or as the Parties may agree), return a response on the relevant CRS comments.
- D2.2 If the City requires another entity or person to review the CRS pursuant to the CRS Review Procedure and as a result, the City is delayed in returning a response on the relevant CRS in the time-frame set out in Section D2.1 of this Schedule 5, the City will, as soon as reasonably possible, notify Design Builder Representative of such delay.

### **D3. Comment Resolution Sheet Closure**

- D3.1 The CRS for a relevant Submittal is closed when all comments have been closed to the satisfaction of the City, acting reasonably. The City will notify Design Builder of the CRS closure in accordance with Schedule 13 – Document Management System.