

SCHEDULE 5

**DESIGN AND PLAN CERTIFICATION
PROCESS AND REVIEW PROCEDURE**

1. DEFINITIONS

In this Schedule 5, in addition to the definitions set out in Section 1.1 of this Agreement, the following expressions have the following meanings (and, where applicable, their plurals have corresponding meanings):

“**Design and Plan Certification Process**” means the design and plan certification process referred to in Section 2;

“**Expert’s Conclusion**” has the meaning indicated in Section 4.3;

“**Non-Compliance Submission**” has the meaning indicated in Section 2.4;

“**Project Co’s Resubmission**” has the meaning indicated in Section 3.5; and

“**Review Procedure**” means the review procedure referred to in Section 3.

2. DESIGN AND PLAN CERTIFICATION PROCESS

2.1 Designs and Plans Submission Schedule and Compliance with Technical Requirements

Prior to the commencement of the Design and Plan Certification Process for the Project, Project Co shall provide a design and plan submission schedule to the City Representative. This design and plan submission schedule shall take into account that more than one submission will likely be required for each design package. The schedule shall illustrate that the design and plan submissions are reasonably spread over the entire design period and that the schedule is reasonable to achieve.

2.2 Preparation of Detailed Designs and Plans

Project Co shall prepare all of the Detailed Designs and the applicable plans forming Project Co’s Management Systems and Plans necessary for the construction of the Project or, if applicable, necessary in connection with any modification in accordance with the Technical Requirements, as may be amended by Change Order.

2.3 Deviation from Designs and Plans Prohibited

Designs and plans submitted to the City in accordance with the Design and Plan Certification Process and Review Procedure shall not be departed from in the construction of the Project, unless subject to Change Order. However, in the event that Project Co proposes that a change to such designs and plans is required due to unforeseen circumstances beyond Project Co’s control or to meet the Technical Requirements, then Project Co shall by way of a Project Co Change

Notice, as soon as reasonably possible and in accordance with Section 2.4, submit such changed designs and plans to the City in accordance with the Design and Plan Certification Process and Review Procedure.

2.4 Design and Plan Submission

Subject to Sections 3.3, 3.4 and 3.9, Project Co shall not commence or permit the commencement of construction of any part of the Project until ten (10) Business Days following the City's receipt of all Detailed Designs (including, but not limited to, design reports, detailed design drawings, shop drawings and construction specifications), all relevant certificates, all Project Co's Management Systems and Plans and Project Co's Works Schedule required in respect of such part of the Project. Neither comment nor failure to provide comment by the City shall relieve against or excuse any failure by Project Co to carry out the Project in accordance with the Technical Requirements.

If any submitted element of the design and construction does not comply with or satisfy the Technical Requirements or materially deviates from the subject matter of Schedule 2 (Works Schedule), Schedule 3 (Project Co's Designs), Schedule 4 (Project Co's Management Systems and Plans) or Schedule 10 (Safety Requirements), 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 in Section 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 Schedule 2 (Project Co's Works Schedule), Schedule 3 (Project Co's Designs), Schedule 4 (Project Co's Management Systems and Plans) or Schedule 10 (Safety Requirements) 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, which Project Co proposes to adopt in order to rectify such non-compliance.

2.5 Design and Plan Availability

To facilitate review by the City, Project Co shall make available at a distinct work area for the Project a current set of reviewed and "issued for construction" drawings for the specific work then being undertaken. Such drawings shall be accessible by the City and its servants, agents, advisors, consultants and contractors. Project Co shall ensure that superseded drawings are removed from the relevant work area at the time they are superseded.

3. REVIEW PROCEDURE

3.1 Additional Documents Requiring Review

Project Co shall provide to the City all Detailed Designs, Project Co’s Management Systems and Plans and Project Co’s Works Schedule not submitted as part of, or amended since, the Submission Date, and the following procedure described in this Section 3 shall apply.

3.2 City’s Review Resources

The City may, in reviewing any matter, refer such matter to other City departments, or any of the City’s servants, agents, advisers, consultants, contractors or subcontractors.

3.3 City’s Responses to Project Co’s Submission

The City shall, as soon as is practicable and in any event within ten (10) Business Days of receipt, return a response on the relevant submission endorsed “Received” or “Comments” or “Observations”, as is appropriate.

3.4 Submission Endorsed “Received”

In the case of submission documents or proposed courses of action endorsed “Received” by the City, Project Co may proceed. A “Received” response (or a failure to provide comment or any response) by the City shall not relieve against or excuse any failure by Project Co to carry out the Project or, if applicable, any Modifications, in accordance with the Technical Requirements and any other applicable provision of this Agreement or estop the City from asserting any non-compliance with the Technical Requirements or any other applicable provision of this Agreement.

3.5 Submission Endorsed “Comments”

Subject to Section 3.11, Project Co shall revise and resubmit any 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 (Works Schedule), Schedule 3 (Project Co’s Designs), Schedule 4 (Project Co’s Management Systems and Plans) or Schedule 10 (Safety Requirements) were materially complied with in the original submission; or
- (b) how the revised submission now meets the Technical Requirements or materially complies with Schedule 2 (Works Schedule), Schedule 3 (Project Co’s Designs), Schedule 4 (Project Co’s Management Systems and Plans) or Schedule 10 (Safety Requirements).

A “Comments” response (or a failure to provide comment or any response) by the City shall not relieve against or excuse any failure by Project Co to carry out the Project or, if applicable, any

Modifications in accordance with the Technical Requirements and any other applicable provision of this Agreement or estop the City from asserting any non-compliance with the Technical Requirements or any other applicable provision of this Agreement.

Project Co shall not commence or permit the commencement of construction of that part of the Project until five (5) Business Days following Project Co's resubmission to the City of any documents or proposed courses of action to which an endorsement of "Comments" was originally attached by the City (a "**Project Co's Resubmission**"), except as may be agreed by the City in writing.

Subject to the City and Project Co agreeing otherwise in writing, any construction commenced or permitted to be commenced by Project Co in respect of that portion of the Project:

- (a) prior to the City issuing a response of "Received" to a Project Co's Resubmission; or
- (b) in respect of a further response of "Comments" by the City to a Project Co's Resubmission, prior to the resolution of the issues raised in the City's further response of "Comments",

is at Project Co's risk in that Project Co's obligation to carry out the Project in accordance with the Technical Requirements and any other applicable provision of this Agreement shall not be relieved against and the City shall not be estopped from asserting any non-compliance with the Technical Requirements or any other applicable provision of this Agreement.

3.6 Scope of the City's "Comments"

When the City provides "Comments" regarding any document or course of action submitted by Project Co, such "Comments" may relate to:

- (a) Project Co's proposed designs, construction activities or construction materials not likely achieving compliance with the Technical Requirements or any other applicable provision of this Agreement and thus requiring Project Co to revisit the document or course of action; or
- (b) on the face of the submission, it is not clear, as determined by the City, that Project Co's proposed designs, construction activities or construction materials will achieve compliance with the Technical Requirements or any other applicable provision of this Agreement and thus requiring Project Co to clarify the document or course of action.

3.7 Submission Endorsed "Observations"

Subject to Section 3.11, Project Co shall revise and resubmit any 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 indicating either:

- (a) how the Technical Requirements were met or Schedule 2 (Works Schedule), Schedule 3 (Project Co's Designs), Schedule 4 (Project Co's Management Systems and Plans) or Schedule 10 (Safety Requirements) were materially complied with in the original submission; or
- (b) how the revised submission now meets the Technical Requirements or materially complies with Schedule 2 (Works Schedule), Schedule 3 (Project Co's Designs), Schedule 4 (Project Co's Management Systems and Plans) or Schedule 10 (Safety Requirements).

An "Observations" response (or a failure to provide comment or any response) by the City shall not relieve against or excuse any failure by Project Co to carry out the Project or, if applicable, any Modifications, in accordance with the Technical Requirements and any other applicable provision of this Agreement or estop the City from asserting any non-compliance with the Technical Requirements or any other applicable provision of this Agreement.

Project Co shall be entitled to commence or permit the commencement of construction of that part of the Project to which an endorsement of "Observations" has been attached by the City.

3.8 Scope of the City's "Observations"

When the City provides "Observations" regarding any document or course of action submitted by Project Co, such "Observations" may relate to Project Co's proposed designs, construction activities or construction materials likely achieving compliance with the Technical Requirements or any other applicable provision of this Agreement but requiring Project Co to provide clarification or additional information.

3.9 No Response by the City

If the City does not return a Project Co's initial submission document within ten (10) Business Days, or documents part of a Project Co's Resubmission within five (5) Business Days, then Project Co shall be entitled to commence or permit to be commenced the construction of those elements of the Project addressed by the submitted document. Neither comment by the City nor failure by the City to provide comment or otherwise participate in any manner in respect of the procedure prescribed by this Schedule 5 shall relieve against or excuse any failure by Project Co to carry out the Project in accordance with the Technical Requirements and any other applicable provision of this Agreement or estop the City from asserting any non-compliance with the Technical Requirements or any other applicable provision of this Agreement.

3.10 Further Information Requested by the City

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 submission 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 this Agreement and is appropriate in the circumstances.

3.11 Disagreement over Comments

If Project Co disagrees with any comment permitted by this Schedule 5, the Parties shall use reasonable efforts to resolve their disagreement through negotiation, failing which either Project Co or the City may resolve the matter pursuant to Section 4.

4. DISPUTES**4.1 Procedure for Disputes**

Subject to Section 3.11, failing the resolution by agreement of any dispute between the Parties relating to or arising out of the designs, plans or the Technical Requirements, that dispute, where the actual or potential total value is less than \$500,000 (as mutually determined by the Parties, acting reasonably), shall in the first instance be referred to the Expert in accordance with Section 2.4 of Schedule 6 (Dispute Resolution Procedure) for the Expert's interpretations of the Technical Requirements in relation to design or construction for immediate interim resolution. The Parties shall comply with the timing and selection requirements set out in Section 2.4 of Schedule 6 (Dispute Resolution Procedure) to select the Expert in a timely manner.

As soon as is practicable after the Expert is appointed and receives a request for such a meeting, but in any event no later than three (3) Business Days after receiving the request, the Expert shall call the representatives of the Parties together at the Project site or any other place the Expert determines most appropriate.

At such a meeting, both Parties will outline the issue or issues in dispute to the Expert.

Should the Expert fail to call such a meeting within the timeframes specified above, the Party requesting the meeting, at its option and in accordance with the Section 2.5 of Schedule 6 (Dispute Resolution Procedure), may initiate arbitration proceedings regarding the issues in dispute.

For disputes where actual or potential total value is more than \$500,000 (as mutually determined by the Parties, acting reasonably), the Parties shall have the option to elect to refer the matter directly to litigation and the dispute will be resolved solely in the Court of Queen's Bench of Saskatchewan in accordance with Section 2.6 of Schedule 6 (Dispute Resolution Procedure). If the Parties do not mutually agree to initiate litigation, the dispute will be handled in accordance with Sections 4.2 to 4.7.

4.2 Expert's Actions

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

4.3 Expert's Conclusion

After giving due consideration to the points raised at the meeting with the Parties and to any additional investigations performed, and in any event no later than five (5) Business Days after the date of the meeting, the Expert shall render a conclusion and shall deliver that conclusion to the Parties (the "**Expert's Conclusion**") specifying:

- (a) the Expert's conclusion as to the proper interpretations of the Technical Requirements in relation to design or construction issues raised by the Parties;
- (b) the Expert's reasons for the conclusions drawn; and
- (c) the effect of the Expert's conclusions on the future work to be performed in the completion of the Project.

At either Party's request, the Expert will provide duplicate copies of a written account of the Expert's Conclusion to the Parties as soon as is practicable after delivering the Expert's Conclusion. Should the Expert fail to render an Expert's Conclusion within the timeframes specified above, the Party requesting the meeting may, at its option, in accordance with the Section 2.5 of Schedule 6 (Dispute Resolution Procedure), initiate arbitration proceedings regarding the issues in dispute.

4.4 Option for a Binding Resolution

Prior to the release of the Expert's Conclusion, the Parties may, by written agreement, choose that the Expert's Conclusion will be final and binding on the Parties and subject only to judicial review. If the Parties do not mutually agree that the Expert's Conclusion is a final and binding resolution, the Expert's Conclusion shall not have a binding effect on the outcome of the dispute.

4.5 Expert's Conclusion Disputed

Subject a binding determination with any such Expert's Conclusion, either Party may, within fifteen (15) Business Days of receiving an Expert's Conclusion and in accordance with the Section 2.5 of Schedule 6 (Dispute Resolution Procedure), initiate arbitration proceedings regarding the issues in dispute, failing which the Expert's Conclusion shall become final and binding on the Parties.

4.6 Expert not to Appear in Arbitration

A Expert who has issued an Expert'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 Expert's Conclusion in any subsequent arbitration or court proceeding to resolve the subject matter of the Expert's Conclusion, nor will either Party refer to or enter into evidence an Expert's Conclusion in such proceeding, unless required by Applicable Law or by a Court.

4.7 Performance of Obligations

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 this Agreement (including the City's obligation to make Payments to Project Co) without prejudice to the right to contest, dispute and challenge the relevant matter in accordance with the provisions of this Agreement.