

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;

“**Non-Compliance Submission**” has the meaning indicated in Section 2.6;

“**Project Adjudicator**” means the person appointed pursuant to Section 2.5, which person will be independent, qualified and experienced in interpreting specifications and standards in relation to design and construction of projects similar to the Works;

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

“**Project Co 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 Design and Plan Submission Schedule

Prior to the commencement of the Design and Plan Certification Process for the Project, Project Co shall provide a design and plan submission schedule. This submission schedule shall take into account that more than one submission will likely be required for each design package. The submission schedule shall illustrate that the design and plan submissions are reasonably spread over the entire design period and that the submission schedule is reasonable to achieve. The submission schedule should be based on the assumption that all quality control approvals have been completed prior to submission.

2.2 Preparation of Detailed Designs and Plans

Project Co shall prepare all of the Detailed Designs and Project Co’s Management Systems and Plans necessary for the construction of the Works and the performance of the Existing Facilities O&M and the O&M or, if applicable, necessary in connection with any modification of the Technical Requirements in accordance with a Change Order. All measurements and dimensions in any document submitted by Project Co to the City shall be specified in SI units.

2.3 Designer and Independent Reviewer Certification

Without limitation, all engineering designs and any architectural designs shall have received the design checks required by Section 2.2.4.2 of Schedule 18 (Technical Requirements), prior to submission for the City's review pursuant to Section 3. In addition to the relevant design, and at the same time Project Co submits any engineering designs or architectural designs to the City for review, Project Co shall provide to the City a certificate signed by both the designer and the Independent Reviewer as required by Section 2.2.4.2 of Schedule 18 (Technical Requirements), certifying that the design was prepared in accordance with the Works Requirements or the O&M Requirements, as the case may be, and is complete, internally consistent and created using Good Industry Practice. In circumstances where there are two designers designing interacting elements, one of the designers shall be identified as the designer responsible for the design of the interaction between the two elements.

2.4 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 Works or the performance of the Existing Facilities O&M or the O&M, 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, as soon as reasonably possible and in accordance with Section 2.3, submit such changed designs and plans to the City in accordance with the Design and Plan Certification Process and Review Procedure.

2.5 Appointment of Project Adjudicator

Within 45 days of the date hereof, the City and Project Co will appoint and enter into a written agreement with a person acceptable to both as Project Adjudicator to whom interpretations of the Works Requirements may be referred for immediate interim resolution.

In the event that the parties cannot agree upon an acceptable person as the Project Adjudicator within the time period provided, the Project Adjudicator shall be determined in accordance with the Dispute Resolution Procedure.

The appointment of the Project Adjudicator will be deemed to be a joint appointment and will be irrevocable by each party without the consent of the other. The appointment of the Project Adjudicator will continue until the completion of the Works. If the Project Adjudicator resigns, dies or is unwilling or unable to continue to act as Project Adjudicator until the completion of the Works, the parties shall immediately appoint a replacement and, in such case, the procedure provided under this Section 2.5 shall apply.

The fees and expenses of the Project Adjudicator shall be set by the terms of the agreement between the parties and the Project Adjudicator. The City and Project Co will share the total costs of the Project Adjudicator equally. Each party shall bear its own costs and expenses in preparing submissions for and attending meetings with the Project Adjudicator. The City and Project Co will agree to release and indemnify the Project Adjudicator in respect of certain

claims provided the Project Adjudicator has acted in good faith and in accordance with the agreement between the parties and the Project Adjudicator.

In the event that a disagreement requiring resolution by the Project Adjudicator arises prior to either of the parties appointing a Project Adjudicator or the determination of the Project Adjudicator by arbitration, neither party's position will be prejudiced. Upon the Project Adjudicator being appointed or named, as the case may be, the disagreement requiring the Project Adjudicator's participation, if still unresolved, will proceed in accordance with Section 4.

2.6 Design and Plan Submission

Subject to Sections 3.3, 3.4 and 3.9, Project Co shall not, without the prior written consent of the City, in its sole discretion, commence or permit the commencement of construction of any component of the Works until 10 Business Days following the City's receipt of all relevant Detailed Designs (including, but not limited to, design reports, detailed design drawings, shop drawings and construction specifications), certificates, Project Co's Management Systems and Plans and portions of Project Co's Construction Schedule required in respect of such component of the Works.

Neither comment nor failure to provide comment by the City shall relieve against or excuse any failure by Project Co to carry out the Works or perform the Existing Facilities O&M or the O&M in accordance with the Works Requirements or the O&M Requirements, as applicable.

Project Co shall divide the Detailed Designs into design packages organized by plant area, engineering discipline or a combination thereof or any other means consistent with Good Industry Practice. Project Co shall provide a 30% design submittal in accordance with Section 3.3 of Schedule 18 (Technical Requirements). Each subsequent design package shall be submitted to the City when the level of completion has reached 90%. Project Co may submit any design package at an earlier level of completion, provided that such earlier submittal shall not obviate the requirement for a 90% submittal. In the event that the City determines that a design package has not reached the 90% level of completion, the City shall notify Project Co of such determination and Project Co shall further advance the design and re-submit the design package when the 90% level of completion has been reached.

If any submission does not comply with or satisfy the Technical Requirements or materially deviates from the subject matter of Schedule 2 (Project Co's Construction Schedule), Schedule 3 (Project Co's Designs), Schedule 4 (Project Co's Management Systems and Plans) or Schedule 16 (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 Construction

Schedule), Schedule 3 (Project Co's Designs), Schedule 4 (Project Co's Management Systems and Plans) or Schedule 16 (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.

2.7 Design and Plan Submission Completeness

A submission shall be considered complete when it consists of all design drawings, reports or plans on electronic media. The City may, acting reasonably, also request hard copies of any submission.

2.8 Design and Plan Availability

To facilitate review by the City, Project Co shall make available to the City and all City Parties a current set of reviewed and "issued for construction" drawings. Project Co shall ensure that superseded drawings are removed 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 portions of Project Co's Construction Schedule not submitted as part of, or amended since, the Submission Date, and the following procedure shall apply.

3.2 City's Review Resources

The City may, in reviewing any matter, refer such matter to any City Party.

3.3 City's Responses to Project Co's Submission

The City shall, as soon as is practicable and in any event within 10 Business Days of receipt, return a response on the relevant submission endorsed "Received" or "Comments" or "Observations", as is appropriate, provided that the City shall be entitled to such additional time as is reasonable in the circumstances if Project Co submits a submission other than in accordance with the submission schedule.

3.4 Submission Endorsed "Received"

In the case of a submission 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 Works, the Existing Facilities O&M, the O&M or, if applicable, any Modifications, in accordance with the Technical

Requirements, Applicable Law 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 submission 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 (Project Co’s Construction Schedule), Schedule 3 (Project Co’s Designs), Schedule 4 (Project Co’s Management Systems and Plans) or Schedule 16 (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 (Project Co’s Construction Schedule), Schedule 3 (Project Co’s Designs), Schedule 4 (Project Co’s Management Systems and Plans) or Schedule 16 (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 Works, the Existing Facilities O&M, the O&M or, if applicable, any Modifications in accordance with the Technical Requirements, Applicable Law 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.

Subject to Section 3.9, Project Co shall not, without the prior written consent of the City, in its sole discretion, commence or permit the commencement of construction of any component the Works until 5 Business Days following Project Co’s resubmission to the City of any submission to which an endorsement of “Comments” was originally attached by the City (a “**Project Co Resubmission**”).

Any construction commenced or permitted to be commenced by Project Co in respect of that component of the Works:

- (a) prior to the City issuing a response of “Received” to a Project Co Resubmission; or
- (b) in respect of a further response of “Comments” by the City to a Project Co 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 Works in accordance with the Technical Requirements, Applicable Law 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 submission, such “Comments” may relate to:

- (a) Project Co’s proposed designs, construction activities, construction materials, Existing Facilities O&M activities or materials or O&M activities or 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 submission; 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, construction materials, Existing Facilities O&M activities or materials or O&M activities or materials will achieve compliance with the Technical Requirements or any other applicable provision of this Agreement and thus requiring Project Co to clarify the submission.

3.7 Submission Endorsed “Observations”

Subject to Section 3.11, Project Co shall revise and resubmit any documents or proposed courses of action 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 (Project Co’s Construction Schedule), Schedule 3 (Project Co’s Designs), Schedule 4 (Project Co’s Management Systems and Plans) or Schedule 16 (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 (Project Co’s Construction Schedule), Schedule 3 (Project Co’s Designs), Schedule 4 (Project Co’s Management Systems and Plans) or Schedule 16 (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 Works, the Existing Facilities O&M, the O&M or, if applicable, any Modifications, in accordance with the Technical Requirements, Applicable Law 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.

3.8 Scope of the City’s “Observations”

When the City provides “Observations” regarding any submission, such “Observations” may relate to Project Co’s proposed designs, construction activities, construction materials, Existing Facilities O&M activities or materials or O&M activities or 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 an initial submission by Project Co within 10 Business Days following the City's receipt of such submission, or any documents forming part of a Project Co Resubmission within 5 Business Days following the City's receipt of such Project Co Resubmission, then Project Co shall be entitled to commence or permit the commencement of construction of the component the Works addressed by the submission or the Project Co Resubmission, as applicable. 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 Works or to perform the Existing Facilities O&M or the O&M in accordance with the Technical Requirements, Applicable Law 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 refer the matter to the Project Adjudicator pursuant to Section 4.

4. PROJECT ADJUDICATOR'S PROCEDURE

4.1 Engaging the Project Adjudicator

Pursuant to Section 2.5 or 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 Works Requirements, that dispute shall in the first instance be referred to the Project Adjudicator for the Project Adjudicator's interpretations of the Works Requirements in relation to design or construction for immediate interim resolution.

Failing a resolution by agreement, either party may request a meeting with the Project Adjudicator. As soon as is practicable after the Project Adjudicator receives a request for such a meeting, but in any event no later than 3 Business Days after receiving the request, the Project Adjudicator shall call the representatives of the parties together at the Project site or any other place the Project Adjudicator determines most appropriate.

At such a meeting, both parties will outline the issue or issues in dispute to the Project Adjudicator.

Should the Project Adjudicator fail to call such a meeting within the timeframes specified above, the party requesting the meeting may, at its option and in accordance with the Dispute Resolution Procedure, initiate arbitration or litigation proceedings regarding the issues in dispute.

4.2 Project Adjudicator's Actions

Upon hearing the parties' issues and reviewing any written materials either party may have presented to the Project Adjudicator in support of its position, the Project Adjudicator shall immediately proceed to investigate the subject of the dispute with a view toward its resolution. The Project Adjudicator 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, whose expertise the Project Adjudicator considers necessary to assist in the resolution of the dispute. The Project Adjudicator shall conduct all such investigations and enquiries as a matter of urgency.

4.3 Project Adjudicator'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 5 Business Days after the date of the meeting, the Project Adjudicator shall render a conclusion and shall verbally deliver that conclusion to the parties (the "**Project Adjudicator's Conclusion**") specifying:

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

In making any such Project Adjudicator's Conclusion, the Project Adjudicator shall be deemed to be an expert and not an arbitrator.

At either party's request, the Project Adjudicator will provide duplicate copies of a written account of the Project Adjudicator's Conclusion to the parties as soon as is practicable after delivering the verbal Project Adjudicator's Conclusion.

Should the Project Adjudicator fail to render a Project Adjudicator's Conclusion within the timeframes specified above, the party requesting the meeting may, at its option, in accordance with the Dispute Resolution Procedure, initiate arbitration or litigation proceedings regarding the issues in dispute.

4.4 Project Adjudicator's Conclusion Disputed

Subject to complying with any such Project Adjudicator's Conclusion, either party may, within 5 Business Days of receiving a Project Adjudicator's Conclusion and in accordance with the Dispute Resolution Procedure, initiate arbitration or litigation proceedings regarding the issues in dispute.

4.5 Project Adjudicator not to Appear in Arbitration

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

4.6 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 performance of their respective obligations under this Agreement (including the City's obligation to make Monthly 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.