

THE CITY OF EDMONTON
PROJECT AGREEMENT
VALLEY LINE LRT – STAGE 1

Schedule 2

Submittal Review Procedure

SCHEDULE 2
SUBMITTAL REVIEW PROCEDURE
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Schedule 2

SUBMITTAL REVIEW PROCEDURE

1. GENERAL

1.1 Application

Any:

- (a) document, information or data (including any plan, record, report, appendix, specification, schedule, procedure, protocol, Final Design, Design Data or Certificate); and
- (b) proposed course of action on the part of Project Co or any Project Co Person,

which, under the terms of:

- (c) this Agreement, is required to be: (i) prepared by, or on behalf of, Project Co or a Project Co Person; (ii) prepared and submitted; or (iii) submitted to the City; or
- (d) any other Project Document, is specifically required to be submitted to the City for its review or comment,

either individually or as a package, and any revision or amendment to any of the foregoing (each a "**Submittal**"), shall, unless otherwise specified, be submitted to the City for review in accordance with this Schedule.

1.2 Submittal Requirements

Each Submittal shall:

- (a) include 2 printed copies and one electronic copy, in a form acceptable to the City acting reasonably;
- (b) be prepared and submitted in English;
- (c) not be combined with any other Submittal;
- (d) be submitted in writing and be clearly identified as a Submittal; and
- (e) be submitted with a cover sheet, in a form acceptable to the City acting reasonably, which shall include:
 - (i) a unique Submittal tracking number;
 - (ii) the date on which the Submittal was prepared and the date on which the Submittal was submitted to the City;

- (iii) a list of all documents and any other information and data included with, or required for interpretation of, the Submittal, including details of all attachments and any other documents, information and data incorporated by reference;
- (iv) a description of the purpose of the Submittal, including reference to the relevant provision(s) of this Agreement, or other Project Document, pursuant to which it is being submitted;
- (v) identification of the applicable Work Package and a description of the component(s) of the design being submitted for review, if applicable;
- (vi) the name of the person or entity that prepared the Submittal; and
- (vii) a detailed Submittal history, in the case of resubmission, including:
 - (A) submission date(s) and endorsement(s) in respect of each prior version of the Submittal;
 - (B) revision number;
 - (C) the name of the person who prepared the Submittal cover sheet and the person(s) or entity(ies) that prepared the documents, information and data included in the Submittal and each revision thereto; and
 - (D) details of any previous Submittal(s) superseded by the current Submittal.

Each Submittal, or the applicable documents, data and other information, as applicable, shall also be signed or sealed by persons with appropriate professional designations, where required by this Agreement, any other Project Document, Applicable Law or Good Industry Practice, to be so signed or sealed.

1.3 Submittal Revision Control

Project Co shall:

- (a) ensure that each Submittal cover sheet includes the applicable Submittal tracking number and that such tracking number is maintained through any revisions to the Submittal;
- (b) ensure that all documents, information and data included as part of a Submittal:
 - (i) includes a unique reference number and that such unique reference number is maintained through any revisions to such document, information or data; and
 - (ii) is categorized and identified in accordance with the document classification and naming framework described in Section 3.2 [*Submittal Tracking*] of this Schedule;

- (c) establish a means of identifying and tracking the resolution of each comment and observation provided by the City on previously submitted versions of a Submittal, and any document, information or data included as part of a Submittal;
- (d) ensure that all revised versions of a Submittal, or document, information or data comprising a Submittal, are identified by a sequential revision number;
- (e) ensure that all correspondence related to a Submittal references the applicable Submittal's tracking number and revision number. Where applicable, correspondence shall also reference the unique reference number(s) applicable to the relevant documents, information or data;
- (f) ensure that all revised Submittals clearly show all revisions from the previous version of the Submittal. Bound documents, including reports and manuals, shall contain a preface that clearly states how revisions are marked and the previous revision number against which the revisions have been marked;
- (g) ensure that a consistent format for mark-ups of Submittals and of all documents, information and data included therein is used (e.g. deletions struck out and additions underscored);
- (h) ensure that revised portions of Design Drawings are clearly marked (with appropriate means to visually distinguish between the parts of the drawing that are revised and the parts that are not revised) and include the revision number and a description of the revision(s) on each drawing; and
- (i) ensure that all Submittals that have been endorsed, or have been deemed endorsed, "Accepted" are kept current. Where a Submittal that has been endorsed, or has been deemed endorsed, "Accepted" is revised as part of another Submittal, all other Submittals relying on, or based on, that Submittal shall also be revised accordingly and all such revised Submittals shall be resubmitted with the Submittal to which they relate.

2. SUBMITTAL IMPLEMENTATION

2.1 Deviation from Submittals Prohibited

Submittals that have been submitted to the City in accordance with this Schedule shall not be departed from otherwise than in accordance with Section 6.12 [*Adherence to Final Design*] of Schedule 4 [*Design and Construction Protocols*] or Schedule 13 [*Changes*]. Provided, that where Project Co proposes that a revision to a reviewed Submittal is required: (i) due to unforeseen circumstances; (ii) to meet the Project Requirements; or (iii) to address comments or observations provided by the City, Project Co shall as soon as reasonably possible, and in any event, prior to implementing a proposed revision, submit such revised Submittal to the City in accordance with this Schedule.

2.2 No Implementation Prior to Acceptance

Project Co shall not implement or permit the implementation of any activity, including any Design, Construction, Operation or Maintenance activity, which is the subject of a Submittal until the applicable Submittal has been “Accepted”, or deemed “Accepted”, by the City in accordance with this Schedule.

3. SUBMITTAL REGISTER

3.1 Submittal Register

Project Co shall compile and maintain a real-time register of all Submittals. The Submittal register shall:

- (a) include the following information with respect to each Submittal that has been submitted to the City in accordance with this Schedule:
 - (i) Submittal tracking number;
 - (ii) unique reference number of all documents, information and data included in each Submittal;
 - (iii) submission date;
 - (iv) date on which the Review Period expires;
 - (v) status of City review and endorsement assigned to the Submittal in accordance with Section 4 [*Review Procedure*] of this Schedule;
 - (vi) any notification of a disputed endorsement, including reasons for the dispute and any supporting documents, submitted under Section 6.1 [*Disputed Endorsement*] of this Schedule;
 - (vii) full content of all documents, information and data included in the Submittal, in read-only format;
 - (viii) identification of the Submittal and the documents, information and data contained therein as an original submission or a resubmission and in the case of a resubmission, a cross reference to each prior submission; and
 - (ix) identification of the name of the City Person to whom the Submittal was provided, where the City has designated a City Person, other than the City’s Representative, to receive a Submittal; and
- (b) be available to designated City Persons at all times without payment, using a secure online Internet based system, acceptable to the City acting reasonably. The submittal register and all associated software and systems shall be implemented and maintained by Project Co throughout the Term.

3.2 Submittal Tracking

Project Co shall develop and implement a comprehensive document classification and naming framework for the identification and categorization of Submittals and the documents, information and data contained therein. The document classification and naming framework shall:

- (a) be consistent with the City's Asset Classification and Numbering System;
- (b) be acceptable to the City, acting reasonably; and
- (c) classify Submittals and the documents, information and data contained therein into logical categories which permit the Parties to easily:
 - (i) identify the nature and scope of all documents, information and data;
 - (ii) identify and distribute the documents, information and data to the appropriate disciplines for review; and
 - (iii) file, store and retrieve the documents, information and data.

4. REVIEW PROCEDURE

4.1 The City's Review Resources

The City's Representative may, in reviewing any Submittal, refer such Submittal to, or seek input from, the City or any City Person, and any review, consideration, decision, belief, opinion or determination referred to herein in relation to the City or the City's Representative may be that of the City's Representative or any such Person upon whose review, consideration, decision, belief, opinion or determination the City relies. The City may also, by written notice to Project Co from time to time, designate a City Person to whom any specific Submittal or class of Submittals is to be submitted by Project Co and Project Co shall comply with any such designation in making submissions under this Schedule. Where a Submittal is submitted in accordance with any such designation, Project Co shall provide the City's Representative with a copy of the Submittal cover sheet and the transmittal of the Submittal to the designated Person at the same time as the Submittal is delivered to that Person.

4.2 Time for City Review

Subject to Section 5.1 [*Request for Further Information*] of this Schedule and Project Co's compliance with the accepted Submittal Schedule, the City shall, as soon as practicable, and in any event within 10 Business Days (or such other period as may be specified in this Agreement) from the date of receipt (the "**Review Period**"), return the relevant Submittal endorsed "Accepted" or (subject to Section 7 [*City's Discretion; No Dispute*] of this Schedule or Section 8 [*Grounds for Rejection and Observations*] of this Schedule, as applicable in each case) "Rejected" or "Observations". If the City fails to return a Submittal duly endorsed within the Review Period, as it may be extended by Section 5.1 [*Request for Further Information*] of this Schedule, the applicable Submittal shall be deemed to have been endorsed "Accepted" and Project Co may proceed with implementation of the activities which are the subject matter of the Submittal.

4.3 Not Used

4.4 Submittal Endorsed “Accepted”

The endorsement “Accepted” will be assigned to those Submittals that, in the opinion of the City, appear to generally conform to the applicable Project Requirements. Project Co may proceed with implementation of the activities which are the subject matter of a Submittal endorsed, or deemed endorsed, “Accepted”.

4.5 Submittal Endorsed “Rejected”

The endorsement “Rejected” will be assigned to those Submittals that, in the opinion of the City, contain significant deficiencies or do not generally conform to the applicable Project Requirements. Except with the prior written consent of the City, which consent may be granted or refused in the City’s discretion, Project Co shall not implement any of the activities which are the subject matter of a Submittal endorsed “Rejected” and shall either:

- (a) revise and resubmit such Submittal, indicating how the Submittal has been revised to address each deficiency and non-conformance identified by the City; or
- (b) refer the matter to the Dispute Resolution Procedure.

Where Project Co revises and resubmits a Submittal endorsed “Rejected”, the City will review the resubmitted Submittal in accordance with this Schedule, provided that the Review Period shall be 10 Business Days (or such other period as may be specified in this Agreement) from the date of receipt.

4.6 Submittal Endorsed “Observations”

The endorsement “Observations” will be assigned to those Submittals that, in the opinion of the City, appear to generally conform to the applicable Project Requirements, subject to correction of minor deficiencies identified by the City’s review.

Project Co shall correct all identified deficiencies and provide a revised copy of the applicable documents comprising such Submittals to the City prior to implementation of those activities to which the identified deficiencies relate. Subject to the preceding sentence, Project Co may proceed with implementation of the activities which are the subject matter of a Submittal endorsed “Observations”.

If, following resubmission of the applicable documents comprising a Submittal endorsed “Observations” in accordance with the preceding paragraph, the City does not, within 5 Business Days (or such other period as may be specified in this Agreement) from the date of receipt, return such documents endorsed “Rejected” or “Observations”, the Submittal shall be deemed to have been endorsed “Accepted”.

4.7 Accepted or No Objection

A reference in this Agreement or other Project Document to the City having “accepted”, or having “no objection” in relation to a particular matter means that such matter has been submitted in accordance with the provisions of this Schedule and the applicable Submittal has been endorsed (or deemed endorsed)

“Accepted” or “Observations”, in the latter case the Submittal having been amended in accordance with the City’s observations.

4.8 City’s Reasons for Endorsement

Where the City endorses a Submittal “Rejected” or “Observations”, the City will provide reasons for the endorsement, referencing particulars of the Section(s) of the Agreement that the Submittal or portion of the Submittal fails to satisfy, and if requested by Project Co, the City will meet with Project Co to discuss the reasons for the endorsement.

Where an individual Submittal is voluminous, the City at its discretion may elect to mark only the cover page or first sheet of the Submittal with the appropriate endorsement, and return to Project Co the cover page or first page, together with individual pages or sheets on which comments or observations are made, along with an explanation of the status of all pages not returned to Project Co. Any pages not returned with such an explanation as to their status will be deemed to be endorsed “Accepted”.

In lieu of returning a Submittal, the City may by letter notify Project Co of the endorsement assigned to a Submittal and if such endorsement is “Rejected” or “Observations” the letter will contain comments in sufficient detail, including referencing applicable Section(s) of the Agreement that the Submittal or portion of the Submittal fails to satisfy.

4.9 Subsequent Discovery of Non-compliances

If at any time after a Submittal has been endorsed, or deemed endorsed, the City or Project Co discovers that a Submittal contains deficiencies or otherwise fails to conform to the requirements of this Agreement, the City or Project Co, as the case may be, will promptly notify the other Party of such deficiencies or non-conformances and the City may revise the endorsement assigned to such Submittal. If the Parties agree or it is determined in accordance with the Dispute Resolution Procedure that the revised endorsement is correct, Project Co shall promptly modify the applicable Submittal(s) and rectify or re-perform any non-conforming Project Work.

5. FURTHER INFORMATION

5.1 Request for Further Information

Where any information, data or documents required to fully:

- (a) appreciate, understand or review a Submittal; or
- (b) understand the Submittal’s implications or relationship to other components of the Project Work,

is not provided with the Submittal, the City may reject the Submittal in accordance with Section 8(e) [*Grounds for Rejection and Observations*] of this Schedule or request such information, data or documents in writing.

Where the City requests further information, data or documents in accordance with this Section:

- (c) Project Co shall promptly submit such further or other information, data and documents and take such other steps as may be required to satisfy the City that the Submittal complies with the applicable Project Requirements; and
- (d) the remainder of the applicable Review Period shall be postponed until such time as the City has received the requested information, data and/or documents, provided that under no circumstances will the City have less than 2 Business Days to complete its review of a Submittal after having received all requested information, data and documents.

5.2 Submittal Meetings and Explanations

At any time, the City may, acting reasonably, require Project Co, including Project Co's consultants, Sub-Contractors, and any other relevant personnel, at no additional cost to the City, to meet with representatives of the City and any other City Persons to answer questions regarding a Submittal(s) or to explain to the City and the City Persons the intent of such Submittal(s), including in relation to any design and any associated documentation and as to its satisfaction of the requirements of this Agreement (including the applicable Project Requirements). Project Co shall, and shall cause its consultants, Sub-Contractors, and any other relevant personnel to, attend all meetings requested by the City and answer all questions asked by the City in accordance with this Section.

6. DISPUTES

6.1 Disputed Endorsement

If Project Co disputes the endorsement issued by the City in respect of a Submittal made under Section 4 *[Review Procedure]* of this Schedule, Project Co shall promptly notify the City of the details of such Dispute and shall submit the reasons why Project Co believes a different endorsement should be assigned, together with appropriate supporting documentation.

The City will review the Submittal, Project Co's reasons and any supporting documentation and within 5 Business Days after receipt thereof will either confirm the original endorsement or notify Project Co of the revised endorsement. If the City fails to respond within the 5 Business Day period, the original endorsement shall be deemed to have been confirmed by the City.

Nothing in this Section will limit either Party's right to refer a Dispute to the Dispute Resolution Procedure.

7. CITY'S DISCRETION; NO DISPUTE

Where, pursuant to the terms of this Agreement or any other Project Document, the consideration of a Submittal is stated to be subject to the discretion of the City, or any City Person, the City may make comments in relation to or reject, as applicable, any such Submittal in its sole, absolute, unfettered and subjective discretion, with no requirement to act reasonably or provide reasons, and such decision shall not be subject to dispute pursuant to the Dispute Resolution Procedure. Where the City rejects a Submittal pursuant to this Section 7 *[City Discretion: No Dispute]*, the City shall provide reasonable feedback with respect to its rejection of the Submittal.

8. GROUNDS FOR REJECTION AND OBSERVATIONS

Subject to Section 7 [*City's Discretion; No Dispute*] of this Schedule, the City may, acting reasonably, reject or make observations, as applicable, with respect to any Submittal on any of the following grounds:

- (a) the Submittal has not been prepared in accordance, or otherwise conflicts or is inconsistent, with the Project Requirements or the requirements of any other Project Document, or has been based on erroneous information or data;
- (b) the Submittal does not conform to the requirements of Section 1.2 [*Submittal Requirements*] of this Schedule, in respect of such Submittal;
- (c) the Submittal is inconsistent, or conflicts, with the contents, requirements or procedures described in an earlier Submittal accepted by the City, pursuant to this Schedule;
- (d) the Submittal has not been prepared in accordance, or otherwise conflicts or is inconsistent, with Good Industry Practice;
- (e) Project Co has not provided all information, data and documents required in order to fully appreciate, understand or review the Submittal, including the Submittal's implications and relationship to other components of the Project Work;
- (f) Not Used; or
- (g) the proposed Submittal, or the adoption of the proposed document or proposed course of action would, or might reasonably be expected to:
 - (i) conflict, or be inconsistent, with the statutory or public duties, functions or obligations of the City;
 - (ii) materially and adversely affect the ability of Project Co to perform its obligations under this Agreement or any other Project Document;
 - (iii) materially and adversely affect any right or obligation of the City under this Agreement or any other Project Document, or the ability of the City to enforce any right or to perform any of its obligations under this Agreement or any other Project Document, or the ability of the City or any other Governmental Authority to carry out any statutory or public duty, function or obligation;
 - (iv) materially and adversely affect any right or obligation of the City under or with respect to any Project Contract; or
 - (v) give rise to a breach, or be in breach, of any Applicable Laws;

and City's Representative shall always be entitled to reject or make observations, as the case may be, on the foregoing grounds notwithstanding any other provision in this Agreement or any other Project Document.

9. REVIEW, APPROVAL, INSPECTION AND AUDIT BY THE CITY

If any review, approval, inspection, examination, audit, testing, determination, acceptance, certificate, certification, permission, consent, comment or observation is provided, performed or made by or on behalf of the City under, pursuant to, or in respect of, this Agreement or any other Project Document, whether pursuant to this Schedule or otherwise, or if no comment or observation is made by or on behalf of the City pursuant to this Schedule or otherwise:

- (a) such review, approval, inspection, examination, audit, testing, determination, acceptance, certificate, certification, permission, consent, comment or observation, or lack of comment or observation, shall be for assessment by the City of general compliance by Project Co with its obligations under this Agreement or the other Project Documents only;
- (b) notwithstanding any other provisions of this Agreement, no such review, approval, inspection, examination, audit, testing, determination, acceptance, certificate, certification, permission, consent, comment or observation, or lack of comment or observation, now or in the future, and whether or not involving any negligent act or negligent omission or error on the part of the City or any City Person:
 - (i) shall relieve or exempt, or be deemed to relieve or exempt, Project Co or any Project Co Person from any of its obligations and liabilities under this Agreement or any other Project Document or at law or in equity;
 - (ii) shall constitute a waiver or release, or be deemed to be a waiver or release, by the City of any duty or liability owed by Project Co or any other Person to the City, or of any indemnity given by Project Co under this Agreement or any other Project Document;
 - (iii) shall create or impose, or be deemed to create or impose, any requirement, liability, covenant, agreement or obligation on the City; or
 - (iv) shall entitle, or be deemed to entitle, Project Co to make any Claim against the City for, or to recover from the City, any Losses, except to the extent Project Co is entitled to recover Direct Losses as a result of the occurrence of a Relief Event; and
- (c) any decision so made by the City under this Schedule shall, once all applicable disputes arising in respect thereof have been resolved in accordance with this Schedule, be final, subject only to being opened up, reviewed or revised by the City in its discretion if errors or further relevant facts are revealed after the decision has been made.

At the request of the City from time to time, Project Co shall obtain from the Key Individuals and any other Persons identified by the City, acting reasonably, prior to any such Party carrying out any part of the Project Work, waivers of liability substantially on the terms of this Section in favour of the City and applicable City Persons and in form and substance satisfactory to the City.