

THE CITY OF EDMONTON
PROJECT AGREEMENT
VALLEY LINE WEST LRT

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 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 one electronic copy, in a form acceptable to the City and, at the request of the City, a native copy of the file;
- (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 as well as a summary of the changes made in the current Submittal versus the previous superseded version of the 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 to be so signed or sealed by this Agreement, any other Project Document, Applicable Law or Good Industry Practice.

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, unique reference number and revision number;
- (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 deemed to be endorsed “Accepted” are kept current. Where a Submittal that has been endorsed, or 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 and subject to the Review Period noted in Section 4.2 [*Time for City Review*].

2. SUBMITTAL IMPLEMENTATION

2.1 Deviation from Submittals Prohibited

Project Co shall not deviate from Submittals that have been Accepted by the City in accordance with this Schedule, except 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 an Accepted 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, with appropriate supporting documentation, in accordance with this Schedule.

2.2 No Implementation Prior to Acceptance

Except as provided in Section 4.6 [*Submittal Endorsed “Observations”*] of this Schedule, Project Co shall not implement or permit the implementation of any activity, including any Design or Construction activity, which is the subject of a Submittal until the applicable Submittal has been endorsed “Accepted” or deemed endorsed “Accepted” by the City in accordance with this Schedule. For greater certainty, this constitutes a Non-Performance Event for which the following exceptions apply:

- (a) The Non-Performance Event does not apply where a Submittal has been deemed endorsed Accepted in accordance with Schedule 2 and the City subsequently revises the endorsement assigned to such Submittal; and
- (b) Project Co may proceed at risk after submission of a Submittal in accordance with Schedule 2 and prior to receiving an endorsement; however, the Non-Performance Event will apply from the start of the activity if, within the Review Period, the Submittal is endorsed Rejected or Observations with non-compliances applicable to the activity.

3. SUBMITTAL REGISTER

3.1 Submittal Register

Project Co shall compile and maintain a real-time register of all Submittals accessible to the City at all times. The requirements for the Submittal Schedule and Register are contained in Section 6.4.1 [*General*] of Schedule 4 [*Design and Construction Protocols*].

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 and Work Breakdown Structure, or as otherwise acceptable to the City;
- (b) be acceptable to the City, acting reasonably; and
- (c) classify Submittals and the documents, information and data contained therein into logical categories aligned to the Work Breakdown Structure and 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.

3.3 Submittal Due Dates

Where a Submittal made pursuant to any of Schedule 4 [*Design and Construction Protocols*], Schedule 5 [*D&C Performance Requirements*] and Schedule 12 [*Communications and Engagement*] is required to be submitted by a specified due date, Project Co may propose alternate dates in the Submittal Schedule and Register. Such revised Submittal dates, if Accepted by the City by way of endorsement of the latest Submittal Schedule and Register in accordance with Schedule 2, shall become the updated due date for the respective Submittal.

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 Operator, 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

- (a) Subject to Section 4.2(b) and Section 5.1 [*Request for Further Information*] of this Schedule, the City shall, as soon as practicable, and in any event:
 - (i) within 15 Business Days from the date of receipt of the Submittal; or
 - (ii) if the Submittal relates to anything that is to be constructed within the Transportation Utility Corridor, then within 25 Business Days from the date of receipt of the Submittal; or

within such longer period as may be specified in this Agreement or agreed by the Parties (each applicable period, 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 4.2(b), 4.2(c) and/or 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.

- (b) Project Co shall submit all Submittals in compliance with the most recent accepted Submittal Schedule and Register. If, at any time:
 - (i) Project Co submits an unusually large number (greater than 20% in excess of the number indicated on the latest accepted Submittal Schedule and Register) or one or more submittals is of greater volume than contemplated by the Submittal Schedule and Register; or
 - (ii) a Submittal was, or Submittals were, received for review more than 5 Business Days later or earlier than indicated in the Submittal Schedule and Register, such that the City cannot review the Submittal or Submittals within the time permitted in the Submittal Schedule and Register;

the City shall, within 5 Business Days of receipt of such Submittal or Submittals, provide Project Co with a reasonable estimate of the time necessary for processing such Submittal or Submittals and the Review Period shall be extended accordingly.

- (c) Project Co shall provide for a progressive and orderly flow of Submittals including Submittals relating to Design Data. For Submittals relating to Design Data, the Review Period will be extended for a Submittal if the Submittal relates to a WBS Discipline which has been submitted and for which the Review Period has not expired. The Review Period for the new WBS Discipline Submittal will be extended by the number of days remaining in the Review Period for the immediately prior Submittal relating to that WBS Discipline. For example:
 - (i) If a Submittal (submitted for the first time) relating to the “Roads” WBS Discipline is submitted on Wednesday, June 3, 2020 and no other Submittals relating to the “Roads” WBS Discipline are under review, the Review Period shall end on Wednesday, June 24, 2020;
 - (ii) If a second Submittal (submitted for the first time) relating to the “Roads” WBS Discipline submitted on Monday, June 8, 2020, the Review Period shall end on Monday, July 13, 2020 (15 Business Days plus 12 Business Days (15 - 3 Business Days = 12) for a total Review Period of 27 Business Days);
 - (iii) If a third Submittal (submitted for the first time) relating to the “Roads” WBS Discipline is also submitted on Monday, June 8, 2020, the Review Period shall end on Friday, August 7, 2020 (15 Business Days plus 27 Business Days (27 – 0 Business Days) = 42 Business Days).

4.3 Submittal Endorsement Commenting

The City may include informational comments with all endorsements for Project Co’s consideration. Project Co may, but is not required to, incorporate changes addressing these comments into the applicable

documents provided, however, that Project Co shall, prior to Construction Completion, provide substantive written responses to all Submittal review informational comments.

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 Project Co 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) dispute the endorsement as provided in Section 6.1 [*Disputed Endorsement*].

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 15 Business Days (or such other period as may be specified in, or permitted by, this Agreement) from the date of receipt and if the City does not return such resubmitted Submittal duly endorsed “Rejected” or “Observations” within such period, the applicable Submittal shall be deemed to have been endorsed “Accepted”.

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 in its review comments.

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. Project Co may proceed with implementation of activities which are the subject matter of a Submittal endorsed “Observations” to the extent such activities are not affected by the deficiencies noted in the City’s review.

Where Project Co revises and resubmits a Submittal endorsed “Observations”, 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, or permitted by, this Agreement) from the date of receipt and if the City does not return such resubmitted Submittal duly endorsed “Rejected” or “Observations” within such period, the applicable Submittal shall be deemed to have been endorsed “Accepted”.

4.7 Accepted

A reference in this Agreement or other Project Document to the City having “accepted” a Submittal 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”.

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 in writing by Project Co, the Parties will meet as soon as practicable and, in any event, within 10 Business Days of such request 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 references to the 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, including, without limitation, an endorsement or deemed endorsement of "Accepted" 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.

4.10 Submittal Reviews – Record Of Comments and Observations (ROCO)

A City endorsement may be accompanied by a form recording all comments and observations on the Submittal (a "**Record Of Comments and Observations Form (ROCO)**") for Submittals endorsed as "Accepted", "Observations", or "Rejected". The ROCO form will include the following information, at the discretion of the City:

- (a) Submittal date;
- (b) name and tracking number of Submittal;
- (c) Submittal references (to identify specific documents within Submittal package);
- (d) issues (e.g. deficiencies, non-conformances and comments), with each such issue separately provided with:
 - (i) unique issue ID;
 - (ii) page or drawing number reference to the specific document within the Submittal package (this may be "General" for issues that are not specific to any document);
 - (iii) reference to section of the Agreement from which the deficiency or non-conformance arises;
 - (iv) issue category classification:

- (A) CAT-1 – issue is of a serious enough nature, in the opinion of the City, to warrant City’s rejection of the Submittal;
- (B) CAT-2 – issue is a non-conformance or other deficiency which must be resolved prior to Project Co proceeding with those activities to which the identified non-conformance or deficiency relates;
- (C) CAT-3 – issue is a non-conformance or other deficiency which, at Project Co’s discretion can either be:
 - (I) interpreted and treated as a CAT-2 issue, or
 - (II) resolved through Project Co’s acceptance of accompanying City condition(s) for acceptance of future related Submittal(s), which in the opinion of the City, would allow the Submittal under review to generally conform to the applicable Project Requirements. Upon Project Co’s confirmed acceptance of the condition(s), Project Co may immediately proceed with those activities to which the identified non-conformance or deficiency relates; or
- (D) CAT-4 – issue is informational in nature and is provided for Project Co’s consideration and response. Project Co may incorporate changes addressing these comments in a future resubmittal at its discretion, and if the City requests, an informative response documented in the ROCO form, for City’s information;
- (v) initials of City reviewer;
- (vi) date of City reviewer comment;
- (vii) fields for Project Co response and proposed closure of the issue; and
- (viii) City issue closure status (identified as open or closed by the City) and date of latest status.

Project Co will provide any required responses in the ROCO form which must accompany the latest re-submission of the Submittal. Based on Project Co’s responses on the ROCO form and the re-submitted Submittal, the City will respond with an updated ROCO form, including the closure status of all ROCO form issues. Project Co agrees to work diligently and cooperatively with the City to resolve and close all ROCO form issues prior to Construction Completion. Closure of all ROCO form issues to the City’s reasonable satisfaction is a Condition Precedent to Construction Completion.

4.11 Diligent Pursuit of Accepted Submittal

Project Co shall work diligently to correct any deficiencies that are the cause of a Submittal whose status is “Observations” or “Rejected” and re-submit the Submittal for City endorsement. If a Submittal submitted for the first time is endorsed “Observations” or “Rejected” by the City or an endorsement in respect of a previously accepted Submittal changes to “Observations” or “Rejected”, Project Co shall diligently work to re-submit the Submittal such that it achieves an endorsement status of “Accepted” within 365 days of the above noted “Observations” or “Rejected” status.

5. FURTHER INFORMATION

5.1 Request for Further Information

Where any further information, data or documents are required by the City 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 request in writing such further information, data or documents.

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

- (c) Project Co shall, within 5 Business Days, 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;
- (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 the City shall, in its discretion, have up to 10 additional Business Days beyond the end of the postponed Review Period, to complete its review of a Submittal following receipt of all such requested further information, data and documents; and
- (e) failing to provide the information within the required timeframe may result in a "Rejected" endorsement at the City's discretion in accordance with Section 8(e).

5.2 Submittal Meetings and Explanations

At any time, the City may require Project Co, including Project Co's consultants, Sub-contractors, and any other relevant personnel, 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 in relation to Project Co's 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, in person or appropriate virtual means acceptable to 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, or status of a ROCO form issue, in respect of a Submittal made under Section 4 [*Review Procedure*] of this Schedule, Project Co shall, within 5 Business Days of receipt of such endorsement or status of a ROCO form issue, notify the City of the details of such disputed endorsement and shall submit the reasons why Project Co believes a different endorsement should be assigned, together with appropriate supporting documentation. If Project Co fails to provide notice and appropriate supporting documentation regarding a disputed endorsement within 5 Business Days, the original endorsement shall be deemed to have been accepted by Project Co.

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, 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's Discretion: No Dispute*], the City shall provide feedback as to the basis for its rejection.

8. GROUNDS FOR REJECTION AND OBSERVATIONS

Subject to Section 7 [*City's Discretion: No Dispute*] of this Schedule, the City may, acting reasonably, endorse "Observations" or "Rejected", 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;
- (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, irrespective of whether such information, data or documents was the subject of a notice by the City in accordance with Section 5.2 [*Submittal Meetings and Explanations*]; or
- (f) 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 Law;

and City's Representative shall always be entitled to endorse a Submittal with "Observations" or as "Rejected", 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 as expressly provided otherwise in this Agreement; 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.

10. NON-PERFORMANCE EVENTS

Failure by Project Co to comply with certain obligations set forth in this Schedule 2 [*Submittal Review Procedure*] may constitute Non-Performance Events and may result in adjustments to the Payments, as more particularly provided in Schedule 16 [*Payment Mechanism*].

42194420.2