

SCHEDULE 5

DESIGN AND PLAN CERTIFICATION PROCESS AND REVIEW PROCEDURE

1. GENERAL

1.1 Capitalized Terms and Section References

Capitalized terms used in this Schedule have the definitions as set out in the Agreement to Design and Build Anthony Henday Drive and Stony Plain Road/100 Avenue Interchange, City of Edmonton, Alberta, Canada (the "**DB Agreement**") between Her Majesty the Queen in right of Alberta and the Contractor, as defined therein, unless expressed otherwise. Unless otherwise provided, references to section numbers are references to sections in this Schedule.

1.2 Definitions and Interpretation

In this Schedule, the following expressions have the following meanings:

"Good Industry Practice" is defined as the exercise of the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a person skilled and experienced in the design and construction of roads and related structures seeking in good faith to comply with all applicable laws and the same contractual obligations as the contractual obligations of the Contractor under the DB Agreement;

"Project Adjudicator" has the meaning as set out in section 1.3 of Schedule 6.

1.3 DB Agreement Reference

This Schedule is referenced in sections 1.3, 5.5, and 5.9 of the DB Agreement.

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, the Contractor shall provide a design and plan submission schedule. 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 Designs and Plans comply with DB Agreement's Technical Requirements

Subject to any Change Orders, the Contractor shall prepare all of the detailed designs and plans necessary for the construction of the Project in accordance with the Technical Requirements.

2.3 Designer and Independent Reviewer Signatures

Without limitation, all engineering designs shall have received the design checks required by section 100.2.1.1 (Design) of Schedule 14 prior to submission for the Province's review pursuant to Section 3 below. In addition to the relevant design, the Contractor shall provide to the Province a certificate signed by both the designer and the required design checker pursuant to section 100.2.1.1 (Design) of Schedule 14 certifying that the design was prepared in accordance with the Project Requirements and is complete, internally consistent and was created using Good Industry Practice.

2.4 Deviation from Designs and Plans Prohibited

Subject to any Change Order, designs and plans submitted to the Province in accordance with this Design and Plan Certification and Review Procedure shall not be departed from in the construction of the Project. However, in the event that the Contractor proposes that a change to such designs and plans is required due to unforeseen circumstances beyond the Contractor's control or that meet the Technical Requirements, then the Contractor shall as soon as reasonably possible submit such changed designs and plans to the Province in accordance with this Design and Plan Certification and Review Procedure.

2.5 Design and Plan Submission

Subject to Section 3.9, the Contractor shall not commence or permit the commencement of construction of any part of the Project until the Contractor receives from the Province the endorsement of "Received" or "Received with Observations" in respect of all detailed designs, all relevant certificates, all the Contractor's Management Systems and Plans, and the Contractor's Construction Schedule required in respect of such part of the Project. Neither comment nor failure to provide comment by the Province shall relieve against or excuse any failure by the Contractor to carry out the Project in accordance with the Project 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 Schedules 2, 3, 4 or 12 of the DB Agreement, the Contractor shall notify the Province 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 (Section 3 below).

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 Schedules 2,

- 3, 4 or 12 to the DB Agreement 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 the Contractor proposes to adopt in order to rectify such non-compliance.

3. REVIEW PROCEDURE

3.1 Additional Documents Requiring Review

The Contractor shall provide to the Province all detailed designs, Contractor's Management Systems and Plans, and Contractor's Construction Schedule not submitted as part of, or amended since, the Contractor's Proposal, and the following procedure shall apply.

3.2 The Province's Review Resources

The Province may, in reviewing any matter, refer such matter to other Alberta government departments, or any of the Province's servants, agents, advisers, consultants, contractors or subcontractors.

3.3 Province's Responses to Contractor's Submission

The Province 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 "Received with Observations", as is appropriate.

3.4 Submission endorsed "Received"

In the case of submission documents or proposed courses of action endorsed "Received" by the Province, the Contractor may proceed. A "Received" response (or a failure to provide comment or any response) by the Province shall not relieve the Contractor from exclusive responsibility for ensuring that the Project complies with the Project Requirements or estop the Province from asserting any non-compliance with the Project Requirements.

3.5 Submission endorsed "Comments"

Subject to Section 3.11, the Contractor shall revise and resubmit any documents or proposed courses of action to which an endorsement of "Comments" has been attached by the Province taking into account the substance of the "Comments" and indicating either:

- (a) how the Technical Requirements were met or Schedules 2, 3, 4 or 12 to the DB Agreement were materially complied with in the original submission; or

- (b) how the revised submission now meets the Technical Requirements or materially complies with Schedules 2, 3, 4 or 12 to the DB Agreement.

A "Comments" response (or a failure to provide comment or any response) by the Province shall not relieve against or excuse any failure by the Contractor to carry out the Project in accordance with the Technical Requirements and Schedule 12 to the DB Agreement.

The Contractor shall not commence or permit the commencement of construction of that part of the Project until the Contractor has received from the Province the endorsement "Received" or "Received with Observations" in respect of the Contractor's resubmission of any documents or proposed courses of action to which an endorsement of "Comments" was originally attached by the Province, except as may be agreed by the Province in writing.

3.6 Scope of the Province's "Comments"

When the Province provides "Comments" regarding any document or course of action submitted by the Contractor, such "Comments" may relate to: (a) the Contractor's proposed designs, construction activities or construction materials, not likely achieving compliance with the Technical Requirements or Schedule 12 to the DB Agreement and thus requiring the Contractor to revisit the document or course of action; or (b) on the face of the submission, it is not clear, as determined by the Province acting reasonably, that the Contractor's proposed designs, construction activities or construction materials, will achieve compliance with the Technical Requirements or Schedule 12 to the DB Agreement and thus requiring the Contractor to clarify the document or course of action.

3.7 Submission endorsed "Received with Observations"

Subject to Section 3.11, the Contractor shall revise and resubmit any documents or proposed courses of action or provide clarification or additional information to which an endorsement of "Received with Observations" has been attached by the Province taking into account the substance of the "Received with Observations" and confirming either:

- (a) how the Technical Requirements were met or Schedules 2, 3, 4 or 12 to the DB Agreement were materially complied with in the original submission; or
- (b) how the revised submission now meets the Technical Requirements or materially complies with Schedules 2, 3, 4 or 12 to the DB Agreement.

An "Received with Observations" response (or a failure to provide comment or any response) by the Province shall not relieve against or excuse any failure by the Contractor to carry out the Project in accordance with the Technical Requirements and Schedule 12 to the DB Agreement.

The Contractor shall be entitled to commence or permit the commencement of

construction of that part of the Project to which an endorsement of "Received with Observations" has been attached by the Province.

3.8 Scope of the Province's "Received with Observations"

When the Province provides "Received with Observations" regarding any document or course of action submitted by the Contractor, such "Received with Observations" may relate to the Contractor's proposed designs, construction activities or construction materials, likely achieving compliance with the Technical Requirements or Schedule 12 to the DB Agreement but requiring the Contractor to provide clarification or additional information.

3.9 No Response by the Province

If the Province does not return a Contractor's submission document (including any resubmitted submission document) within 10 Business Days of that document's actual receipt, then the Province shall be deemed to have returned that submission document to the Contractor endorsed "Received". Neither comment by the Province nor failure by the Province to comment or otherwise participate in any manner in respect of the procedure prescribed by this Schedule shall relieve against or excuse any failure by the Contractor to carry out the Project in accordance with the Technical Requirements and Schedule 12 to the DB Agreement.

3.10 Further Information Requested by the Province

If the Province so requires, the Contractor shall submit any further or other information, data and documents (including without limitation, details of calculations and comments of the Contractor's design team members) that may be reasonably required for a full appreciation of any submission contemplated above and its implications. The Contractor shall take all such steps as may be reasonably required to satisfy the Province that the proposed document or proposed course of action complies with the DB Agreement or is appropriate in the circumstances.

3.11 Disagreement over Comments

Should the Contractor disagree with any such comment permitted by this Schedule, the parties shall first use reasonable commercial efforts to resolve their disagreement through negotiation, failing which either the Contractor or the Province may refer the matter to the Project Adjudicator.