

Section Cover Page

2007-10-15

Section 00761
General Conditions

This Section contains standard general conditions of contract. Do not edit this Section; use as is. If necessary, the General Conditions may be modified by Supplementary Conditions or elaborated on in Section 01000 – General Requirements.

This Master Specification Section contains:

- .1 This Cover Page
- .2 Specification Section Text:
 - .1 Contract Documents
 - .2 Assignment
 - .3 Subcontracts
 - .4 Federal Goods and Services Tax (GST)
 - .5 Protection of Property
 - .6 Hold Harmless
 - .7 Liability Insurance
 - .8 Regulatory Requirements
 - .9 Cleaning
 - .10 Materials and Equipment
 - .11 Labour
 - .12 Employment Conditions
 - .13 Defective Services
 - .14 Minister's Right to Terminate
 - .15 Amendments
 - .16 Extensions to Contract Term
 - .17 Payment
 - .18 Confidentiality
 - .19 Conflict of Interest
 - .20 Dispute Resolution
 - .21 Minister's Right of Review
 - .22 Relationship Between the Parties
- .3 Insurance – Change in Coverage:

Where the insurance policy provided by the contractor does not provide a firm commitment to notify the Minister within the prescribed 30 day period, contract managers should request proof of insurance coverage at six month intervals. It is good practice to regularly confirm that the contractor's insurance is valid, especially where contractors have a history of cash flow or bookkeeping problems where insurance coverage may be at risk of lapsing.
- 4. Attachments:
 - .1 CCDC 9A-2001 - Statutory Declaration of Progress Payment Distribution by Contractor
 - .2 AI/MS Form 00630A – Statutory Declaration of Payment Distribution.

1. CONTRACT DOCUMENTS

- .1 The "Contract Documents" consist of: the Letter of Acceptance of the Contractor's bid; the executed Bid and Contract Form, the General Conditions, Supplementary Conditions when used, those parts of the Bidding Requirements documents having application during performance of the Contract; other documents contained in the Specifications; Drawings; Schedules; such other documents as may be identified as Contract Documents, and amendments thereto made in accordance with provisions of the Contract.
- .2 The Minister, in the first instance, shall decide on questions arising under the Contract Documents, interpret requirements therein, and judge performance thereof.
- .3 The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all.

2. ASSIGNMENT

- .1 The Contractor shall not assign the Contract, either in whole or in part, nor shall the Contractor sublet the Contract as a whole, without previous written consent of the Minister, which consent shall be at the Minister's sole discretion.
- .2 The Minister shall not be bound by any assignment by the Contractor of any monies payable or to become payable to the Contractor under the Contract, without the written consent of the Minister, which consent shall be at the Minister's sole discretion.
- .3 The Minister reserves the right to assign the Contract, in whole or in part, to any person, firm or corporation, subject to the Contractor having been given 30 day written notice of the Minister's intention to make an assignment.

3. SUBCONTRACTS

- .1 The Minister will recognize the Contractor only. Nothing contained in the Contract Documents shall create any contractual relationship between any subcontractor and the Minister.
- .2 The Contractor shall bind every subcontractor by the terms of the Contract Documents, to the extent applicable to the services performed by the subcontractor.

4. FEDERAL GOODS AND SERVICES TAX (GST)

- .1 The Contract Price shall exclude GST.

5. PROTECTION OF PROPERTY

- .1 The Contractor shall take reasonable precautions necessary to protect the Minister's property from damage during the performance of the Contract and shall make good any damage to the Minister's property caused by the Contractor during the performance of the Contract.

6. HOLD HARMLESS

- .1 The Contractor shall indemnify and hold harmless the Minister from any and all third party claims, demands, actions or costs (including legal costs on a solicitor-client basis) for which the Contractor is legally responsible, including those arising out of negligence or willful acts by the Contractor or the Contractor's employees or agents. This hold harmless provision shall survive the Contract.

7. LIABILITY INSURANCE

- .1 The Contractor shall, at its own expense and without limiting its liabilities under the Contract, insure its operations under a general liability insurance policy, placed with an insurer that complies with the Insurance Act (Alberta). Coverage shall be in an amount not less than \$2,000,000.00 inclusive per occurrence, insuring against bodily injury, personal injury and property damage including loss of use. Such insurance shall provide the Minister with 30 days advance written notice of cancellation or material change restricting coverage.
- .2 The Contractor shall maintain automobile liability insurance on all vehicles owned, operated or licensed in the name of the Contractor, in an amount not less than \$1,000,000.00.
- .3 Prior to commencement of any activities under the Contract, and at any time requested by the Minister, the Contractor shall provide the Minister with a certificate of insurance, certifying that all insurance coverages required by the Contract Documents are in effect.

8. REGULATORY REQUIREMENTS

- .1 The Contractor shall comply with all laws, ordinances, rules, regulations, orders, codes and other legally enforceable requirements applicable to performance of the Contract.
- .2 The Contractor shall apply and pay for necessary permits or licences required for performance of the Contract.
- .3 The Contractor shall comply with the Occupational Health and Safety Act (Alberta) and regulations issued pursuant thereto.
- .4 The Contractor shall comply with the Workers' Compensation Act (Alberta). Unless Workers' Compensation Board (WCB) coverage is unavailable to the Contractor, the Contractor shall maintain a WCB account, in good standing, for the term of the Contract. Prior to commencement of the services, the Contractor shall provide the Minister with a WCB letter of clearance or a letter from the WCB confirming that coverage is unavailable to the Contractor.

9. CLEANING

- .1 The Contractor shall keep the assigned area of property free from accumulations of waste materials resulting from the performance of the Contract.

10. MATERIALS AND EQUIPMENT

- .1 Unless otherwise specified, the Contractor shall provide, maintain, and pay for all materials, tools, machinery, equipment, temporary facilities, controls, and conveniences, necessary for the performance of the Contract.

11. LABOUR

- .1 Unless otherwise specified in the Contract Documents, the Contractor shall provide and pay for all labour necessary for the performance of the Contract.
- .2 Persons employed in performance of the Contract shall be skilled in and competent to properly perform the tasks assigned to them and, when required by regulatory requirements or the Contract Documents, qualified to do so.
- .3 The Contractor shall maintain good order and discipline among persons employed at the property.

12. EMPLOYMENT CONDITIONS

- .1 The Contractor shall ensure that wages, hours of work and other conditions of employment of all persons employed in the performance of any part of the Contract shall be in compliance with the Employment Standards Code (Alberta) and the Labour Relations Code (Alberta).

13. DEFECTIVE SERVICES

- .1 "Defective Services" means services, including materials and equipment used or provided by the Contractor in the performance of the Contract, which are, in the Minister's opinion, unsatisfactory, faulty or deficient, or do not conform to the Contract Documents.
- .2 If, at any time, the Minister notifies the Contractor of Defective Services, the Contractor shall promptly rectify such Defective Services and render acceptable services.

14. MINISTER'S RIGHT TO TERMINATE

- .1 If the Contractor should be adjudged bankrupt, or becomes insolvent, the Minister may, without prejudice to any other right or remedy the Minister may have, by giving the Contractor or receiver or trustee in bankruptcy written notice, terminate the Contract.
- .2 If the Contractor fails to comply with the requirements of the Contract to a substantial degree, the Minister may notify the Contractor in writing that the Contractor is in default of its contractual obligations and instruct the Contractor to correct the default within a reasonable period of time immediately following the receipt of such notice. If the Contractor fails to correct the default in the time specified in the notice, the Minister may, without prejudice to any other right or remedy the Minister may have, terminate the Contract.
- .3 The Minister may, by giving a written notice of termination to the Contractor, terminate the Contract at any other time.

14. MINISTER'S RIGHT TO TERMINATE (CONT'D.)

- .4 If the Minister terminates the Contract, for any reason, the extent of the Minister's liability to the Contractor shall be limited to payment for all services rendered in accordance with the Contract Documents up to the date of termination.

15. AMENDMENTS

- .1 The Minister, without invalidating the Contract, may at any time, or from time to time, amend the services required to be rendered under the Contract, consisting of additions, deletions or other modifications to the scope of services. Such amendments shall be authorized in writing by the Minister and shall, if necessary, include an equitable adjustment to the Contract Price.
- .2 If an equitable adjustment to the Contract Price on account of an amendment to the scope of services cannot be agreed upon by the parties, it shall be considered a dispute and resolved in accordance with article 20.

16. EXTENSIONS TO CONTRACT TERM

- .1 The Minister may, prior to expiry of the term of the Contract specified elsewhere in the Contract Documents, extend the Contract for a further period of time, subject to conditions mutually agreed to in writing by the Minister and the Contractor.

17. PAYMENT

- .1 Unless otherwise agreed, payment will be made monthly, based on services rendered during the preceding payment period.
- .2 When payment is on the basis of a stipulated price arrangement, amounts invoiced by the Contractor shall be based on equal monthly amounts derived from the Contract price, less the amount of allowances, if any, included in the Contract price, divided by the number of months in the term of the Contract.
- .3 When payment is on the basis of a unit price arrangement, amounts invoiced by the Contractor shall be based on Contract unit prices.
- .4 Notwithstanding 17.2 and 17.3, amounts invoiced by the Contractor shall be adjusted as required on account of amendments to the Contract and expenditure of allowance amounts authorized by the Minister.
- .5 All invoices shall exclude GST.
- .6 The Minister will review invoices and may adjust amounts claimed.
- .7 The Minister may deduct from any amount claimed by or payable to the Contractor, an amount equal to the value, as determined by the Minister, of services not rendered, or not rendered in accordance with the Contract Documents.

- .8 The Minister may deduct from any amount payable to the Contractor an amount required to satisfy:
- .1 any unresolved third party claim submitted pursuant to the Public Works Act (Alberta), or
 - .2 any unpaid and overdue statutory account related to the Contract and which is enforceable against the Minister.
- .9 In order to protect the Minister or third parties from loss, if the Contractor:
- .1 fails to make payments properly to subcontractors or for labour, materials, or equipment, or
 - .2 persistently fails to render services in accordance with the Contract Documents,
- the Minister may withhold all or part of any amount payable to the Contractor, until the Contractor remedies such failures to the Minister's satisfaction.
- .10 The Contractor's invoice for final payment under the Contract shall include:
- .1 Letter of clearance from Workers' Compensation Board,
 - .2 completed Statutory Declaration Form CCDC 9A-200 or AI/MS Form 00630A – Statutory Declaration of Payment Distribution.
- 18. CONFIDENTIALITY**
- .1 The Contractor and the Contractor's employees shall not use, copy, disclose or otherwise communicate any information not available to the general public that was gained by them in the course their duties related to the Contract, except as may be necessary in the proper discharge of those duties. This obligation shall survive the Contract.
- 19. CONFLICTS OF INTEREST**
- .1 The Contractor and the Contractor's employees shall not accept any commission, discount, allowance, indirect payment, gift, or other benefit that is connected, directly or indirectly, with the performance of their duties related to the Contract, that causes, or would appear to cause, a conflict of interest.
 - .2 The Contractor and the Contractor's employees shall have no financial interest in the business of any third party that causes, or would appear to cause, a conflict of interest in connection with the performance of their duties related to the Contract, and should such an interest be acquired during the term of the Contract, the Contractor shall promptly declare it to the Minister.
- 20. DISPUTE RESOLUTION**
- .1 Unresolved disputes between the parties shall be settled by mediation or arbitration, unless both parties agree to litigation.
 - .2 If both parties agree to use mediation, the mediation shall be conducted by a qualified mediator who is a member of the Alberta Arbitration and Mediation Society and is acceptable to both parties. The parties shall enter into an agreement with the mediator setting out procedures, timing, and an equal sharing of costs, prior to the mediation proceedings.
 - .3 If the parties do not agree to use mediation, or if mediation is used but is unsuccessful, a referral to arbitration may be effected by either party serving notice on the other.
 - .4 A referral to arbitration shall be to a single, qualified, arbitrator who is a member of the Alberta Arbitration and Mediation Society and is acceptable to both parties. The parties shall enter into an agreement with the arbitrator setting out procedures, timing, and an equal sharing of costs, prior to the arbitration proceedings. The arbitration shall be in accordance with the Arbitration Act (Alberta). An arbitration award shall bind the parties, except as otherwise provided by the Act.
 - .5 During any dispute resolution process, and without prejudice to any claim that either party may have, the Contractor shall continue to render the services without delay and the Minister shall pay undisputed invoices without delay.
- 21. MINISTER'S RIGHT OF REVIEW**
- .1 The Contractor shall permit the Minister to review, inspect and critique the Contractor's performance of the services.
 - .2 The Minister may, at the completion of the Contract, evaluate the Contractor's performance of the services. The results of the performance evaluation will be reviewed with the Contractor.
- 22. RELATIONSHIP BETWEEN THE PARTIES**
- .1 The Contractor, in providing the services, is acting as an independent contractor. No agency, partnership or employee-employer relationship is created between the Contractor and the Minister or between any of the Contractor's employees, subcontractors, or subcontractors' employees and the Minister.

Statutory Declaration of Progress Payment Distribution by Contractor

Standard Construction Document

CCDC 9A - 2001

To be made by the Contractor **prior to payment** when required as a condition for either:

- second and subsequent progress payments; or
- release of holdback.

The last application for progress payment for which the Declarant has received payment is No. _____
dated the _____ day of _____,
in the year _____.

Identification of Contract

Name of Contract (Location and description of the Work as it appears in the Contract Documents)

Date of Contract: _____
Day Month Year

Name of Owner

Name of Contractor

Identification of Declarant

Name of Declarant

Position or Title (of office held with Contractor)

Declaration

I solemnly declare that, as of the date of this declaration, I am an authorized signing officer, partner or sole proprietor of the Contractor named in the Contract identified above, and as such have authority to bind the Contractor, and have personal knowledge of the fact that all accounts for labour, subcontracts, products, services, and construction machinery and equipment which have been incurred directly by the Contractor in the performance of the work as required by the Contract, and for which the Owner might in any way be held responsible, have been paid in full as required by the Contract up to and including the latest progress payment received, as identified above, except for:

- 1) holdback monies properly retained,
- 2) payments deferred by agreement, or
- 3) amounts withheld by reason of legitimate dispute which have been identified to the party or parties, from whom payment has been withheld.

I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath.

Declared before me in _____ this _____ day of _____,
City/Town and Province
in the year _____.

Signature of Declarant

(A Commissioner for Oaths, Notary Public, Justice of the Peace, etc.)

The making of a false or fraudulent declaration is a contravention of the Criminal Code of Canada, and could carry, upon conviction, penalties including fines or imprisonment.

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Identification of Contract

Contract Name (location and description of the Work as it appears in the Contract Documents)	Contract ID:		
	Date of This Application for Payment		
	Month	Day	Year
	Date of Last (Immediate Preceding) Application for Payment		
	Month	Day	Year

Identification of Declarant (person making the declaration)

Full Name of Declarant	Position or Title (of office held with Contractor)		
Business Name (Name of Contractor)			
Business Address			
City or Town	Province	Postal Code	

Declaration

I, the undersigned, solemnly declare that as of the date of this application for payment:

- .1 all the Contractor's lawful obligations to subcontractors and suppliers, in respect of work contracted for and performed before the date of the last (immediate preceding) application for payment, are fully discharged, except for (i) hold back monies properly retained, and (ii) payments deferred by agreement;
- .2 all the Contractor's lawful obligations to workers, in respect to work contracted for, are fully discharged;
- .3 all assessments and payments required to be made by the Contractor under law have been made in full; and that
- .4 I am an authorized signing officer of the Contractor and have personal knowledge of the contract identified and the facts stated in this statutory declaration.

I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath.

Making a false or fraudulent declaration is a contravention of the Criminal Code of Canada, and could carry, upon conviction, penalties including fines, imprisonment, or both.

Signature of declarant

Attestation (to be completed by a person empowered to receive declarations, e.g. Commissioner of Oaths, Notary Public, etc.)

DECLARED before me at _____ this _____ day of _____ 20 _____		
City/Town and Province		
_____ Signature of person before whom declaration is made	_____ Authority to receive solemn declarations	_____ Expiry date
_____ Name (please print)	Any changes or corrections on this Statutory Declaration must be initialed by the person before whom the declaration is made.	