

CANADA KUWAIT PDH/PP Project

CKPC-056-INF-MSA Namepi Bridge Construction

SCHEDULE K – FORM OF PRIME CONTRACTOR AGREEMENT

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FORM OF PRIME CONTRACTOR AGREEMENT

THIS AGREEMENT is dated as of [], 20[].

BETWEEN:

CANADA KUWAIT PETROCHEMICAL LIMITED PARTNERSHIP, a limited partnership having offices at Suite 4000, 585 8th Avenue S.W., Calgary, Alberta T2P 1G1

(hereinafter “**Owner**”)

and

[CONTRACTOR]

(hereinafter “**Contractor**”)

WHEREAS:

- A. The Parties have entered into a Master Services Agreement dated as of [], 20[] (the “**Contract**”) under which a purchase order has been issued, pursuant to which Contractor will be performing the Work at the Project Site; and
- B. The OH&S Act requires that every construction and oil and gas work site must have a Prime Contractor if there are two or more Employers involved in work at the work site at the same time.

NOW THEREFORE in consideration of the mutual promises and agreements of the Parties herein expressed and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Unless otherwise specified or the context otherwise requires, capitalized but otherwise undefined terms in this Agreement will have the respective meaning given to such terms in the Contract, and:

- (a) “**Agreement**” means this agreement, including any Exhibits or Schedules hereto, as amended from time to time by the Parties.
- (b) “**Employer**” means employer as defined in the OH&S Act.
- (c) “**Handover**” means reassigning of the Prime Contractor status to another party or returning Prime Contractor responsibilities to the Owner.
- (d) “**Hazard**” means a hazard as defined in the OH&S Act.

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- (e) **"OH&S Act"** means the *Alberta Occupational Health and Safety Act*, S.A. 2017, c. O-2.1, and the Regulations and Code established thereunder, as amended from time to time.
- (f) **"Parties"** means Owner and Contractor, and their respective successors and permitted assigns; and **"Party"** means any one of them.
- (g) **"Prime Contractor"** means the prime contractor as defined in the OH&S Act.
- (h) "Project Site" means • **[NTD: CKPC to provide description]**

1.2 Interpretation

- (a) Unless otherwise defined in this Agreement or to the extent the context requires, capitalized terms used herein and not otherwise defined shall have the meaning set forth in the Contract.

2. DESIGNATION OF PRIME CONTRACTOR

2.1 Designation

- (a) Contractor is hereby designated as the Prime Contractor for the Project Site for the duration specified in this Agreement.

3. DUTIES OF OWNER

3.1 General Duties

- (a) Contractor shall have the right, as Prime Contractor, to manage any personnel at the Project Site with respect to health and safety regulated matters to the extent required for Contractor to fulfill its Prime Contractor Responsibilities pursuant to the OH&S Act and this Agreement, regardless of whether or not any contractual relationship exists between the Contractor and any such persons;
- (b) To the extent Contractor's directions or instruction as Prime Contractor comply and are consistent with the OH&S Act and all other applicable Laws, Owner shall fully support any directions and instruction of Contractor that are given to any person gaining access to the Project Site at Owner's request or direction;
- (c) Owner shall inform each of its personnel and Other Contractors prior to their entry to the Project Site that the Contractor has been designated as the Prime Contractor;
- (d) The Owner shall maintain and provide the Contractor with a list of all Owner personnel and all Other Contractors who will be attending the Project Site;
- (e) The Owner acknowledges that the Contractor may, at its sole discretion, for reasons of health and safety protection, acting in good faith, take immediate action to cause parts of or all of the activity on or impacting the Project Site to be stopped or cause any personnel of Contractor, or Owner excluded from the Project Site

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4. DUTIES OF PRIME CONTRACTOR

4.1 General Duties

- (a) Contractor will assume the role of Prime Contractor and will assume all of the duties and responsibilities of Prime Contractor as set forth in the OH&S Act and the Contract including this Agreement, for the Project Site.
- (b) During such time that Contractor is Prime Contractor for the Project Site, and subject to the requirements of the OH&S Act and without limiting the generality of this Section 4.10, Contractor will:
 - (i) implement and maintain health and safety plans prepared by Contractor;
 - (ii) establish, as far as it is reasonably practicable to do so, a system or process that will ensure compliance with the OH&S Act in respect of the Project Site;
 - (iii) coordinate, organize and oversee the performance of all Work at the Project Site to ensure, as far as it is reasonably practicable to do so, that no person is exposed to Hazards arising out of, or in connection with, activities at the Project Site;
 - (iv) conduct the Prime Contractor's own activities in such a way as to ensure, as far as it is reasonably practicable to do so, that no person is exposed to Hazards arising out of, or in connection with, activities at the Project Site;
 - (v) consult and cooperate with the **[joint Project Site health and safety committee or health and safety representative]**, as applicable, to attempt to resolve any health and safety issues;
 - (vi) coordinate the health and safety programs of Employers and self-employed persons at the Project Site, if two or more Employers or self-employed persons or one or more Employers and one or more self-employed persons at the Project Site have a health and safety program. . If there are Employers that do not have a health and safety program, the Contractor shall ensure the Employer follows the Contractor's health and safety program;
 - (vii) cooperate with any other person exercising a duty imposed by the OH&S Act;
 - (viii) ensure the Project Site has one or more access points to the Project Site, the designated access points having conspicuous signage indicating Contractor's role of Prime Contractor within the Project Site;
 - (ix) take all reasonable steps to ensure the Project Site boundary is sufficiently clear and delineated with fencing or a continuous physical boundary in each case, in accordance with the OH&S Act, in order to allow all persons accessing the Project Site to understand precisely where the Project Site exists;

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- (x) manage all Employers and persons at the Project Site with respect to health and safety regulated matters to the extent required to fulfill its Prime Contractor responsibilities pursuant to the OH&S Act regardless of:
 - (A) whether or not any contractual relationship exists between Contractor and any of those Employers and persons; and
 - (B) whether or not any of those Employers and persons have been specifically identified to perform Work at the Project Site;
- (xi) comply with the requirements of all applicable laws, including the OH&S Act; and
- (xii) take all necessary actions that are required to establish and maintain a system or process that will safeguard the health and safety of all persons at the Project Site.
- (c) Provided that Contractor complies with all the requirements described in this Section 4.0, and all applicable Law, Contractor shall have overall governance of the health and safety program, practices, procedures and requirements developed, executed and implemented for the Project Site.

4.2 Persons Entering Project Site

- (a) Contractor shall ensure that all Employers and persons entering the Project Site must register at the designated access points, complete Contractor's required orientation, and follow the Contractor's pre-access procedure requirements at the Project Site. Such persons will have access to the Project Site upon approval from Contractor, such approval not to be unreasonably withheld or delayed.
- (b) Before the commencement of any Work at the Project Site, and at reasonable intervals thereafter, or at Owner's request, Contractor shall provide to Owner, in writing, a list of any and all contractors, Employers, and persons who may enter onto or be involved in Work at the Project Site.
- (c) Owner shall provide to Contractor, in writing, a list of any and all contractors, Employers, and persons under Owner's management or direction who may enter onto or be involved in Work at the Project Site. Such list shall be provided to Contractor sufficiently in advance of when they are scheduled to be at the Project Site to allow Contractor to comply with its obligations under the OH&S Act and Section 4.0 of this Agreement.
- (d) Contractor shall take all reasonable steps to prevent access to the Project Site by any person other than those authorized to enter onto the Project Site.
- (e) Contractor shall take all reasonable steps to prevent access to the Project Site by any person other than through the designated access points, and in doing so shall take reasonable steps to prohibit access to the Project Site through any other area.

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4.3 Management of persons at the Project Site

- (a) Contractor agrees to advise all Employers, and persons who may access the Project Site and prior to their arrival at the designated access points, that:
 - (i) every person must register at the designated access point and follow any pre-access procedure requirements as directed by Contractor; and
 - (ii) every person must comply with the Prime Contractor's directions at all times with respect to health and safety requirements and that the failure to do so could result in their removal from the Project Site.

4.4 Prime Contractor's Discretion

- (a) Owner hereby acknowledges that Contractor may, at its sole discretion for reasons of health and safety, acting in good faith, in compliance with its obligations hereunder take immediate action to cause parts of, or all of, the Work over which it is Prime Contractor to be stopped, direct the manner in which Work shall be performed, or cause any person to be removed from or excluded from the Project Site.
- (b) Contractor shall communicate with the Owner as soon as possible with respect to any such Work stoppage and agrees any such Work stoppage will not, without Owner's consent (such consent not to be unreasonably withheld or delayed), continue beyond three hours.

5. TERM AND SURVIVAL

5.1 Term

- (a) The term of this Agreement, and the Contractor's assumption of the role of Prime Contractor for the Project Site, shall commence upon the date that work commences at the Project Site and shall terminate on the date upon which the Owner delivers to Contractor in writing a notice that Contractor's role as Prime Contractor at the Project Site has terminated in accordance with Section 7 of this Agreement.
- (b) Contractor's designation as Prime Contractor on the Project Site shall be terminated in the event that the Contract is terminated.

5.2 Survival

- (a) Notwithstanding Section 5.1, the provisions of this Agreement which by their nature are intended to survive the termination, cancellation, expiration or completion of this Agreement including all definitions, interpretation provisions and such other terms and conditions which are necessary to give effect to these provisions, shall survive any termination, cancellation, expiration or completion of this Agreement for so long as may be required to ensure that any obligations prescribed by such provisions have been completely discharged.

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6. HANDOVER

6.1 Handover Requirements

- (a) The Parties shall ensure that any Handover, of part or all of the Project Site, meets the following requirements:
 - (i) the prime contractor handover document provided by Owner (the “**Prime Contractor Handover Document**”) must specify the geographical area at the Project Site which is subject to the Handover which has a continuous visible boundary, such as a continuous fence, delineated by structures or other physical markings, or otherwise identified and agreed to in writing by the Parties;
 - (ii) the Prime Contractor Handover Document and associated boundary markings established at the Project Site must be sufficiently clear to allow a reasonably prudent worker to understand what portion of the Project Site is subject to the authority of a Prime Contractor other than Contractor.
- (b) Contractor is responsible for clearly demarking the boundaries for the Handover. In the event that fencing can be reasonably utilized to demark the boundaries for the Handover, Contractor shall be responsible for providing, installing and maintaining such fencing. In the event that fencing cannot be used to demark the boundaries of the Handover, Contractor shall be responsible for providing, installing and maintaining such materials as are necessary to clearly identify the boundaries with a physical barrier.
- (c) The Prime Contractor Handover Document shall be signed by Owner and Contractor.
- (d) Contractor shall agree to execute all Prime Contractor Handover Documents reasonably provided to Contractor by Owner.
- (e) All Prime Contractor Handover Documents executed in connection with this Agreement shall, upon execution, be deemed to be attached to and form part of this Agreement hereto and unless stated otherwise, such documents shall be effective as of the date they were executed by the Parties. In the event of any conflict, ambiguity, inconsistency or discrepancy between any provision in this Agreement and any Prime Contractor Handover Document, the provisions of this Agreement shall govern to the extent of any such conflict, ambiguity, inconsistency or discrepancy.

7. TERMINATION, TRANSFER AND ASSIGNMENT OF PRIME CONTRACTOR ROLE

7.1 Termination

- (a) The Owner may for any reason, and without cause, terminate the Contractor’s role as Prime Contractor for all or any portion of the Project Site by providing written notice of termination to the Contractor, any such notice clearly indicating the date of termination and the portion of the Project Site subject to such termination.

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- (b) In the event that Contractor fails to perform its duties and responsibilities as Prime Contractor under the terms of this Agreement and applicable Law, Owner shall provide notice to Contractor of Owner's specific concerns. Contractor's failure to commence to cure such breach within 14 day after notice from Owner shall constitute a default under the Contract and the Owner shall have all rights and remedies provided under the Contract in respect of such default in addition to the rights and remedies provided herein. If Contractor does not correct the unacceptable performance by measures taken within a time period which ensures the health and safety of all persons, Owner may terminate this Agreement with seven days' written notice, any such notice clearly indicating the date of termination and the portion of the Project Site subject to such termination.
- (c) If Owner terminates this Agreement under this Section 7, Owner may designate another person as Prime Contractor for the Project Site, and Contractor agrees to adhere to the directions given by the subsequently designated Prime Contractor.
- (d) The Contractor shall have the right to terminate its role as prime contractor in the event that the Owner is in material breach of its obligations under this Article.

7.2 Assignment and Transfer of Prime Contractor Role

- (a) Contractor shall not assign or otherwise transfer its role as Prime Contractor for all or any portion of the Project Site without Owner's written consent, which consent shall be in Owner's sole discretion.

8. RIGHT TO INSPECT OR AUDIT

8.1 Right to Inspect and Audit

- (a) Owner reserves the right to inspect or audit the Project Site for which Contractor is Prime Contractor hereunder, and the performance of Contractor under this Agreement, at any time during the term of this Agreement. Contractor will respond in writing to Owner's recommendations in Owner's audit reports arising from such audits or inspections with remedial action plans to address any deficiencies within appropriate time periods.

9. GENERAL

9.1 Notice

- (a) Any notice or communication required or permitted to be given under this Agreement will be in writing and will be considered to have been sufficiently given if delivered by hand or transmitted by electronic transmission to the address or electronic mail address of each Party set out below:
 - (i) if to the Owner:
 -
 -

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Attention:

Email:

(ii) if to the Contractor:

-
-

Attention:

Email:

or to such other address or electronic mail address as either Party may, from time to time, designate in the manner set out above.

9.2 Governing Law

- (a) This Agreement will be deemed to be made pursuant to the laws of the Province of Alberta and the laws of Canada applicable therein and will be governed by and construed in accordance with such laws.

9.3 Attornment

- (a) For the purposes of any legal actions or proceedings brought by either Party against the other, the Parties hereby irrevocably submit to the exclusive jurisdiction of the courts of the Province of Alberta and acknowledge their competence and the convenience and propriety of the venue and agree to be bound by any judgment thereof and not to seek, and hereby waive, review of its merits by the courts of any other jurisdiction. Notwithstanding the foregoing, any dispute arising under or in relation to this Agreement, shall be managed in accordance with the dispute resolution provisions of the Contract.

9.4 Successors and Assigns

- (a) This Agreement shall be binding on the Parties, their respective successors, executors, administrators, heirs and permitted assigns.
- (b) Owner shall not assign its interests in this Agreement without Contractor's prior written consent (such consent not to be unreasonably withheld or delayed).

9.5 Conflicting Agreements

- (a) This Agreement is incorporated into and shall form part of the Contract. If there is any conflict between the Contract and this Agreement, this Agreement shall prevail.

9.6 Severability

- (a) Should any provision of this Agreement be finally determined by a court of competent jurisdiction to be illegal, void or otherwise unenforceable, such provision shall be severed from the rest of this Agreement, and the rest of this Agreement shall remain in full force and effect and be binding on the Parties.

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9.7 Waiver

- (a) The failure of either Party to exercise any contractual right or remedy will not constitute a waiver thereof and no waiver will be effective, unless it is communicated in writing to the other Party. A waiver of any right or remedy arising from a breach of this Agreement will not constitute a waiver of any right or remedy arising from any other breach of this Agreement.

9.8 Counterparts

- (a) This Agreement may be executed in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF the Parties have executed this Agreement dated this ____ day of _____, 20__.

**CANADA KUWAIT PETROCHEMICAL
LIMITED PARTNERSHIP by its General
Partner CANADA KUWAIT PETROCHEMICAL
CORPORATION**

CONTRACTOR

By: _____
Name:
Title:

By: _____
Name:
Title:

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APPENDIX “A”

Prime Contractor Handover Document Template

PRIME CONTRACTOR HANDOVER DOCUMENT

WORKSITE SUBJECT TO HANDOVER

(Check one or both, noting a map must be attached unless not reasonably available)

- ☒ Map of Worksite(s) attached document number: _____
☐ Sketch and Boundary Description per below

HANDOVER

FROM (check one):	TO (check one):
<input checked="" type="checkbox"/> Canada Kuwait Petrochemical Limited Partnership	<input type="checkbox"/> Canada Kuwait Petrochemical Limited Partnership
<input type="checkbox"/> [Contractor].	<input checked="" type="checkbox"/> I[Contractor].

(each a “Party” and collectively, the “Parties”)

HANDOVER TIME AND DATE

Handover shall be effective as of:

TIME: _____ ☐ AM ☐ PM (check one) Mountain Standard Time

DATE: the _____ day of _____, 2019

This Prime Contractor Handover transfers the role of Prime Contractor **FROM** the Party specified in the Handover section of this document **TO** the Party specified in the Handover section of this document effective as of the Handover Time and Date. The Party to whom the Prime Contractor role is being transferred pursuant to this Handover Document agrees to accept the role of Prime Contractor as of the Handover Time and Date and to fulfill all the requirements of the role of Prime Contractor in accordance with the Alberta Occupational Health and Safety Act and all applicable contracts in respect of the Canadian Kuwait Petrochemical Limited Partnership Project that are executed by the Parties to this Prime Contractor Handover Document.

**Canada Kuwait Petrochemical Limited Partnership,
By its general partner, Canada Kuwait
Petrochemical Corporation**

Contractor

(Signature of authorized person)

(Signature of authorized person)

(Print name)

(Print name)

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(Title)

(Title)

(Date)

(Date)

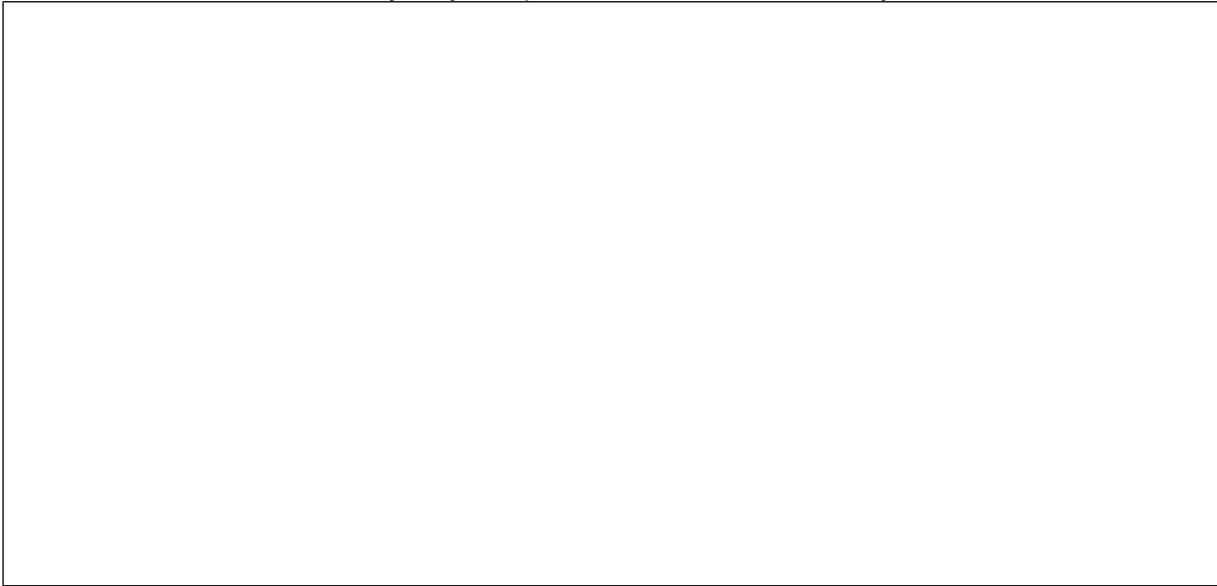
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BOUNDARY DESCRIPTION

If a map is not attached, reference all boundary markers here. If a map is attached, additional details of the Worksite boundary may be specified here for further clarity.



SKETCH OF APPLICABLE BOUNDARIES



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MAP OF WORKSITE

Map specifying Worksite Boundary subject to Prime Contractor Handover to be attached to this page if reasonably available.

All notices to be given pursuant to this Prime Contractor Handover document shall be in writing and shall be sent to the following contacts:

to Owner at:	
with a copy to:	
to Contractor at:	