

Canadian Pacific Kansas City Operational Special Provision - Indemnification and Insurance Requirements Concerning the Canadian Pacific Kansas City Railway Company

SECTION GC 6.0 - INSURANCE, PROTECTION, AND PROPERTY

GC 6.01 Protection of Work, Persons, and Property

Subsection GC 6.01, of OPSS 100 is amended by the addition of the following paragraph:

.06 For the purpose of subsection GC 6.02, Indemnification, and GC 6.03, Contractor's Insurance, the following definitions apply:

Affiliate means as defined in the *Canada Business Corporations Act*, as amended, and replaced from time to time or in any statute or statutes passed in substitution therefor.

Canadian Pacific Kansas City Operational Special Provision means the Special Provision incorporated by the Contract Documents related to the means and methods by which the Contractor is to perform the Work on the Railway Lands.

CPKC means Canadian Pacific Kansas City Railway Company.

CPKC Indemnified Group means the Canadian Pacific Kansas City Railway Company, its Affiliates, officers, directors, employees and agents.

Losses means any and all claims, suits, demands, awards, actions, proceedings, losses, costs, damages, expenses, charges (including all penalties, loss of profit, loss of income or consequential losses) which a person suffers, sustains, pays or incurs and includes reasonable costs of legal counsel (on a solicitor client basis) and other professional advisors and consultants incurred in connection therewith.

Personnel means the servants, employees and agents of the Contractor and all individual persons engaged or retained by the Contractor, whether directly or indirectly, in connection with the Contract, including its Subcontractors.

Railway Lands means the portion of the lands owned by the Canadian Pacific Kansas City Railway Company specified in the Contract Documents, and includes all improvements, railway lines and structures situated thereon.

GC 6.02 Indemnification

GC 6.02.01 General

Clause GC 6.02.01 of OPSS 100 is amended by the addition of the following:

- .06 Notwithstanding paragraphs .01 and .03 of GC 6.02.01, General (Indemnification), the Contractor also agrees to indemnify and hold harmless the Owner and the CPKS Indemnified Group from and against any and all Losses, suffered or incurred by the CPKC Indemnified Group to the extent that such arise out of, results from, are based upon or are in any way connected with:
- a) The Contractor's breach of its obligations under the Canadian Pacific Kansas City Operational Special Provision of this Contract, including anything required to be done or maintained by the Contractor thereunder or anything not done or maintained by the Contractor as required thereunder;
 - b) Any negligent acts or omissions or wilful misconduct by any Personnel (including, for certainty, any and all Subcontractors); and

- c) The Contractor's breach of the timing or conditions of any track block approved by CPKC with respect to the Contract.
- .07 The Contractor shall make no claim or demand against the CPKC Indemnified Group for any Losses, injury (including death), or damage to property suffered or sustained by the Contractor, Personnel or any other person which arises out of, or is connected with:
- a) The Canadian Pacific Kansas City Operational Special Provision of this Contract;
 - b) The Work on the Railway Lands;
 - c) Anything required to be done or maintained thereunder; or
 - d) Anything not done or maintained as required thereunder;
- and hereby waives as against the CPKC Indemnified Group all such claims and demands.
- .08 Without limiting the generality of the foregoing, the Contractor shall indemnify and save harmless the Owner or CPKC Indemnified Group from and against any Losses which the Owner or CPKC Indemnified Group may suffer or incur resulting from inadequate or faulty construction of the Work for the Contract.
- .09 If the Contractor's Work is disrupted or delayed at any time for any cause, including the occurrence of an event of force majeure, expiration of a track block, or maintenance required by CPKC, the Contractor shall not have a claim against the Owner or the CPKC Indemnified Group for any Losses resulting from any such interruption or delay, and the Contractor hereby waives and releases the Owner or the CPKC Indemnified Group from any such claim.
- .10 The provisions of subsection 6.02 shall survive the Contract Completion or termination of the Contract.

GC 6.03 Contractor's Insurance

Subsection GC 6.03 of OPSS 100 is deleted in its entirety and replaced by the following:

- .01 The Contractor shall at its sole cost and expense, obtain and maintain until Contract Completion with an insurer licensed under the *Insurance Act* (Ontario), the following policies of insurance:
- a) *"Wrap-Up" Commercial General Liability* insurance covering the Owner, the CPKC Indemnified Group and all agents, contractors and sub-contractors who perform Work upon the lands identified in the Contract Documents, including the Railway Lands, and including all architects and engineers (but not for professional liability) with a limit of not less than [* Designer Fill-In, See Notes to Designer] or subject to such coverage amount as determined by the CPKC Indemnified Group that shall be determined on a case-by-case basis for any one loss or occurrence for personal injury, bodily injury, or damage to property including loss of use thereof arising out of the Work. This insurance policy shall by its wording or by endorsement include but not be limited to the following:
 - i. The CPKC Indemnified Group as additional insured;
 - ii. "cross liability" or "severability of interest" clause which shall have the effect of insuring each entity named in the policy as an insured in the same manner and to the same extent as if a separate policy had been issued to each;
 - iii. Blanket contractual liability;
 - iv. Broad form products and completed operations, not less than 24 months completed operations coverage;
 - v. Shall not exclude operations on or in the vicinity of the railway right-of-way, if applicable;
 - vi. Non-owned auto liability;
 - vii. Employer's liability;
 - viii. Broad form property damage;
 - ix. Landowner's and Contractor's protective liability;
 - x. Employees as additional insured;

- xi. Property damage due to explosion, collapse and underground property damage; and
 - xii. Sudden and accidental pollution liability.
- b) Automobile *Liability* insurance with the Contractor ensuring that its Subcontractors shall also be independently maintaining such automobile liability insurance so that both the Contractor and its Subcontractors are covering bodily injury and property damage in an amount not less than five million dollars (\$5,000,000) per accident, covering the ownership, use and operation of any motor vehicles and trailers which are owned, leased or controlled by the Contractor and/or its Subcontractors, and used in connection with the Contract.
- c) Contractor's *Pollution Liability* insurance, including naming the CPKC Indemnified Group as an additional insured, with a limit of not less than five million dollars (\$5,000,000) for any one loss or pollution event. Coverage shall include, but not be limited to, claims for bodily injury, death, damage to property including the loss of use thereof, clean-up costs and associated legal defense expenses arising from pollution conditions caused by, and/or exacerbated by, work performed by the Owner and/or the Contractor. The policy shall be endorsed to contain a blanket contractual liability endorsement. If this policy is written on a "claims-made" basis it shall remain in effect for no less than 12 months after Contract Completion or termination of the Contract.

[** Designer Option, See Notes to Designer]

- .02 Upon request, the Contractor shall provide the Owner with written confirmation from the Ontario Workplace Safety and Insurance Board that the Contractor is registered under and in compliance with the requirements of the *Workplace Safety and Insurance Act, 1997* (Ontario), as amended and replaced from time to time or any statute or statutes passed in substitution therefor, together with all regulations made from time to time under such act.
- .03 The Contractor shall provide the Owner with a copy of certificates of insurance evidencing the above insurance to the satisfaction of the Owner prior to the Contractor accessing the Railway Lands and the commencement of the Work, whichever first occurs. The Owner may at its option require the Contractor to annually provide the Owner with a copy of updated certificates of insurance evidencing the renewal of the above insurance. The Owner shall have no obligation to examine such certificates or to advise the Contractor in the event its insurance is not in compliance herewith. Acceptance of such certificates which are not compliant with the stipulated coverage shall in no way whatsoever imply that the Owner has waived the insurance requirements of the Contract.
- .04 The Contractor agrees that the insurance coverage required to be obtained and maintained by it under these provisions shall not limit or restrict its liabilities under this Contract, including these provisions.
- .05 Unless otherwise specified, all insurance coverage shall take place in the form of an occurrence basis policy and not a claims made policy.
- .06 The Contractor agrees that the insurance coverage is primary and not excess of any other insurance that may be available.
- .07 The Contractor shall provide the Owner and CPKC with written notice and all reasonable particulars and documents related to any damages, losses, incidents, claims and potential claims as soon as practicable after the damage, loss, incident or claim has been discovered.
- .08 The insurance policies shall be endorsed to provide CPKC with not less than 30 Days written notice in advance of cancellation, material change or amendments restricting coverage (with the exception of the automobile policies). Such notice shall be sent to:

Canadian Pacific Kansas City Railway Company
7550 Ogden Dale Road SE
Calgary, AB, T2C 4X9
Attention: Director of Risk Management

- .09 If at any time the Contractor fails to obtain and maintain any of the insurance required under this provision, on notice from the Owner or CPKC, the Contractor shall immediately stop all activities on the Railway Lands and the Contractor shall not access (whether directly or indirectly) the Railway Lands until it has received written approval from CPKC or the Owner.

NOTES TO DESIGNER

* Designer Fill-Ins

Insert the dollar value(s) for the *"Wrap-Up" Commercial General Liability* insurance and when applicable, for the *Commercial General Liability (CGL)* insurance. The dollar value(s) shall be confirmed with CPKC and shall be consistent with the CPKC Legal Agreement for the project. The dollar value(s) shall be entered in written format followed by the numerical value in brackets, e.g., ten million dollars (\$10,000,000).

** Designer Options

Insert the following, when required by CPKC.

- d) For operations not covered by the *"Wrap-Up" Commercial General Liability* insurance set forth, the Contractor shall obtain and maintain until Contract Completion, a *Commercial General Liability (CGL)* policy with a limit of not less than [* Designer Fill-In] for any one loss or occurrence for personal injury, bodily injury, or damage to property including loss of use thereof. This policy shall by its wording or by endorsement include but not be limited to the following:
 - i. The CPKC Indemnified Group as an additional insured with respect to obligations of the Contractor under the Contract;
 - ii. "cross liability" or "severability of interest" clause which shall have the effect of insuring each entity named in the policy as an insured in the same manner and to the same extent as if a separate policy had been issued to each;
 - iii. Blanket contractual liability, including the insurable liabilities assumed by the Contractor under this Agreement;
 - iv. Products and completed operations;
 - v. Shall not exclude operations on or in the vicinity of the railway right of way;
 - vi. Non-owned auto liability;
 - vii. Sudden and accidental pollution liability; and
 - viii. Employer's liability, if applicable.

WARRANT: All contracts involving Canadian Pacific Kansas City (CPKC) Railway Company.