

DESIGN BULLETIN # 94/2017

Engineering Consulting Guidelines for Highway, Bridge, And Water Projects Volume 1- 2011 Appendix H Update

Summary

This Bulletin is issued to inform all consultants and Department staff of the update to the Engineering Consulting Guidelines (ECG) Volume 1, Design and Tender (2011), Appendix H, Utility Adjustment Agreements and Design Bulletin (DB) #71/13.

The Department has recently completed discussions with ATCO Pipelines (a division of ATCO Gas and Pipelines Ltd.) on the master template agreements for highways constructed over ATCO Pipelines where ATCO pipelines are located within Alberta Transportation's right-of-way.

The Department and ATCO Pipelines have agreed that effective immediately, the master template agreement in effect will refer to the June, 2006 version of the agreements (attached below). This is for the time being until the new master template agreements are completed by the Utility Partnering Sessions.

Key Changes

Under the conditions listed in the Summary above, these agreements listed below will supersede the ATCO Pipeline agreements found in the ECG; Sample 12 of Appendix H.

- (1) Letter agreement, "ROADWAY UPGRADING/NEW ROAD PIPELINE CROSSING AGREEMENT".
- (2) Letter agreement, "ROADWAY UPGRADING (HYDROVACING ONLY) PIPELINE CROSSING AGREEMENT".
- (3) Letter agreement, "Master Agreement Regarding Prime Contractor Obligations", with Department dated June 8, 2006.

Effective Date

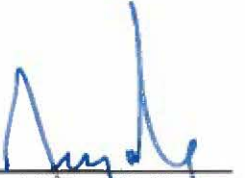
Immediately

Contact

Any questions can direct to Joe P. Mah at (780) 415-1018
Delivery Services Branch, Alberta Transportation

Approved:

Recommended:



Joe P. Mah, M.Eng.P.Eng.
A/Director, Utilities and Land Section
Delivery Services Branch



Michael Botros, P. Eng.
Executive Director
Delivery Services Branch

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ROADWAY UPGRADING/NEW ROAD PIPELINE CROSSING AGREEMENT

This agreement is made as of the <date> day of <April>, A.D. 20<year>

BETWEEN

Her Majesty the Queen in right of the Province of Alberta
as represented by the Minister of Transportation
(hereinafter called the "Minister")

- and -

ATCO Pipelines, a division of ATCO Gas and Pipelines Ltd.
a body corporate registered and existing under the laws of the Province of Alberta
(hereinafter called the "Operator")

WHEREAS the Minister intends to make improvements to a roadway known as **Hwy.**
<#> which may result in a ground disturbance within the controlled area (**Alberta
Pipeline Act**) or Safety Zone (**National Energy Board Act**) of the Operator's pipelines
in the land legally described as:

<LEGAL>

as shown on the attached Plan No. _____, (*and adjustment costs as
negotiated in a letter dated _____ which form part of this
agreement.) *IF APPLICABLE

AND WHEREAS the Operator obtained a permit from the Minister for placement of a
pipeline under **Hwy.** <NUMBER>

NOW THEREFORE, pursuant to the applicable section of the **Alberta Highways
Development and Protection Act**, the **National Energy Board Act**, **Alberta Pipeline
Act and Rules** the **Water Gas and Electrical Companies Act**, and the **Gas
Distribution Act** (hereinafter called the "Acts"), the Minister and the Operator agree as
follows:

1) The Operator's representative shall be:

(Name): <Field Rep>
(Telephone Number): _____
(Address): _____

2) The Minister's representative shall be:

(Name): _____, Construction Manager

(Telephone Number): () - _____

(Address): Alberta Transportation, _____ District

3) The Minister (or his delegate) shall contact the Operator at least seventy-two (72) hours (excluding Saturdays, Sundays and Statutory Holidays) prior to undertaking any excavation or construction within the controlled area as defined in the Pipeline Act, or Safety Zone as defined in the National Energy Board Act, as the case may be. The Operator, upon receiving such notice, shall make arrangements to have a representative present during the period machinery is to be used within the controlled area or safety zone, as the case may be, and to witness the exposure of the Operator's pipeline(s). No excavation or construction of any sort shall be carried out within the controlled area or safety zone, as the case may be, until the Operator's representative is present at the site and has authorized same, unless the Operator has advised otherwise by written notice to the Minister.

4) The Operator shall locate and mark the horizontal position of the Operator's pipeline(s) as requested by the Minister at the Operator's sole cost.

5) The Operator's pipeline shall be exposed under the direction of the Operator by hand digging or other acceptable method, such as excavation by water or air jets to determine the exact location and depth of cover before construction is undertaken over it. The cost of this exposure shall be borne by the Minister.

6) In the event pipeline work is required and the Operator is authorized by the Minister to carry out the work, the Operator shall carry out all necessary and permanent protection, adjustment or relocation of their pipeline(s) as required to accommodate the roadway construction.

The Minister would assign Prime Contractor responsibilities, as specified in the Occupational Health and Safety Act, to ATCO Pipelines as per the Master Agreement regarding Prime Contractor obligations with the Department dated June 8, 2006. This Master Agreement regarding Prime Contractor shall be appended herewith to form part of the agreement document.

7) If the pipeline work is of such a kind as to fall within the purview of the National Energy Board Act and National Energy Board Pipeline Crossing Regulations, the Operator agrees to carry out the work in accord with the Canada Labour Code R.S.C. (as amended) and the Oil and Gas Occupational Safety and Health Regulations SOR/84-304.

- 8) In the event that the Minister authorizes the pipeline work to be done by a person, either legal or natural, other than the Operator, the Minister agrees to require that person to fulfill the responsibilities and duties of the Prime Contractor as that term is used in the Occupational Health and Safety Act, R.S.A 2000, as amended, and any regulations made pursuant to that Act. However, if the pipeline work is of such a kind as to fall within the purview of the National Energy Board Act, and the National Energy Board Pipeline Crossing Regulations, the Minister agrees to require the person to carry out the work in accordance with the Canada Labour Code R.S.C. (as amended) and the Oil and Gas Occupational Safety and Health Regulations SOR/84-304.
- 9) The Minister shall carry out all work within the controlled area or safety zone, as the case may be, in accordance with good engineering and construction practices, and in accordance with the relevant Acts.
- 10) The Minister shall ensure that no equipment, material or vehicles will be stored, parked or driven over or along the controlled area or safety zone, as the case may be, except as reasonably necessary in the actual construction of the roadway.
- 11) If any excavation or construction equipment is to be moved across the controlled area or safety zone, as the case may be, prior to excavation or construction, and as a temporary protective measure, the Operator may require direct protective measures in accordance with good engineering and construction practices, and in accordance with the relevant Acts, to be placed across the Operator's pipeline(s) at the point of crossing, the cost of which shall be borne by the Minister.
- 12) The Minister shall be liable for and shall indemnify and save harmless the Operator from all manner of actions, causes of action, proceedings, claims, demands, costs, damages and expenses whatsoever including damage to the Operator's pipeline(s), which the Operator may sustain, pay or incur as a result of or in connection with any breach of the obligations assumed under this document by, or the negligence of, the Minister, his employees, servants or agents.
- 13) The Operator shall be liable for and shall indemnify and save harmless the Minister from all manner of actions, causes of action, proceedings, claims, demands, costs, damages and expenses whatsoever including damage to the Minister's facilities which the Minister may sustain, pay or incur as a result of or in connection with any breach of the obligations assumed under this document by, or the negligence of, the Operator or any person for whom the Operator is responsible at law or in equity.

14) Any written notice required or permitted hereunder shall be directed to the party to whom it will be given (hand delivered, sent by prepaid mail, or sent by telecommunication), addressed as follows:

(a) **To the Minister:**

Alberta Transportation
_____ **Region**

ATTENTION: _____ **(Name)**
Construction Manager
_____ **Region**

(b) **To the Operator:**

ATCO Pipelines,
a division of ATCO Gas and Pipelines Ltd.
7210-42 Street
Edmonton, AB T6B 3H1

ATTENTION: Land Department

And in the event of mail service disruption, such notice shall be delivered by hand.

15) Where the terms and conditions in this document contradict any portion of the Acts, the latter shall prevail.

16) The terms and conditions of this agreement shall be effective from the date shown at the beginning of this agreement.

**Executed on behalf of the
Operator by:**

**Executed on behalf of the
Minister by:**

«name»
Sr. Land Administrative Coordinator

Construction Manager
_____ **Region**

AP File Number «FILE #»

Our File: Hwy. «#»

ROADWAY UPGRADING (HYDROVACING ONLY) PIPELINE CROSSING AGREEMENT

This agreement is made as of the «number» day of «month», A.D. 20«yr»
BETWEEN

Her Majesty the Queen in right of the Province of Alberta
as represented by the **Minister of Transportation**
(hereinafter called the "Minister")

- and -

ATCO Pipelines, a division of ATCO Gas and Pipelines Ltd.
a body corporate registered and existing under the laws of the Province of Alberta
(hereinafter called the "Operator")

WHEREAS the Minister intends to make improvements to a roadway known as **Hwy. «number»** which may result in a ground disturbance within the controlled area (**Alberta Pipeline Act**) or Safety Zone (**National Energy Board Act**) of the Operator's pipelines in the land legally described as:

LEGAL DESCRIPTION «legal»

AND WHEREAS the Operator obtained a permit from the Minister for placement of a pipeline under **Hwy«number»**

NOW THEREFORE, pursuant to the applicable section of the **Alberta Highways Development and Protection Act**, the **National Energy Board Act**, **Alberta Pipeline Act and Rules**, the **Water Gas and Electrical Companies Act**, and the **Gas Distribution Act**, (hereinafter called the "Acts"), the Minister and the Operator agree as follows:

1) The Operator's representative shall be:

(Name): «operations clerk»
Telephone Number): _____
(Address): _____

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2) The Minister's representative shall be:

(Name): _____, Construction Manager

(Telephone Number): () - _____

(Address): Alberta Transportation, _____ District

3) The Minister (or his delegate) shall contact the Operator at least seventy-two (72) hours (excluding Saturdays, Sundays and Statutory Holidays) prior to undertaking any excavation or construction within the controlled area as defined in the Pipeline Act, or Safety Zone as defined in the National Energy Board Act, as the case may be. The Operator, upon receiving such notice, shall make arrangements to have a representative present during the period machinery is to be used within the controlled area or safety zone, as the case may be, and to witness the exposure of the Operator's pipeline(s). No excavation or construction of any sort shall be carried out within the controlled area or safety zone, as the case may be, until the Operator's representative is present at the site and has authorized same, unless the Operator has advised otherwise by written notice to the Minister.

4) The Operator shall locate and mark the horizontal position of the Operator's pipeline(s) as requested by the Minister at the Operator's sole cost.

5) The Operator's pipeline shall be exposed under the direction of the Operator by hand digging or other acceptable method such as excavation by water or air jets to determine the exact location and depth of cover before construction is undertaken over it. The cost of this exposure shall be borne by the Minister.

6) In the event pipeline work is required and the Operator is authorized by the Minister to carry out the work, the Operator shall carry out all necessary and permanent protection, adjustment or relocation of their pipeline(s) as required to accommodate the roadway construction.

The Minister would assign Prime Contractor responsibilities, as specified in the Occupational Health and Safety Act, to ATCO Pipelines as per the Master Agreement regarding Prime Contractor obligations with the Department date on June 8, 2006. This Master Agreement regarding Prime Contractor shall be appended herewith to form part of the agreement document.

7) If the pipeline work is of such a kind as to fall within the purview of the National Energy Board Act and National Energy Board Pipeline Crossing Regulations, the Operator agrees to carry out the work in accord with the Canada Labour Code R.S.C. (as amended) and the Oil and Gas Occupational Safety and Health Regulations SOR/84-304.

- 8) In the event that the Minister authorizes the pipeline work to be done by a person, either legal or natural, other than the Operator, the Minister agrees to require that person to fulfill the responsibilities and duties of the Prime Contractor as that term is used in the Occupational Health and Safety Act, R.S.A 2000, as amended, and any regulations made pursuant to that Act. However, if the pipeline work is of such a kind as to fall within the purview of the National Energy Board Act, and the National Energy Board Pipeline Crossing Regulations, the Minister agrees to require the person to carry out the work in accordance with the Canada Labour Code R.S.C. (as amended) and the Oil and Gas Occupational Safety and Health Regulations SOR/84-304.
- 9) The Minister shall carry out all work within the controlled area or safety zone, as the case may be, in accordance with good engineering and construction practices, and in accordance with the relevant Acts.
- 10) The Minister shall ensure that no equipment, material or vehicles will be stored, parked or driven over or along the controlled area or safety zone, as the case may be, except as reasonably necessary in the actual construction of the roadway.
- 11) If any excavation or construction equipment is to be moved across the controlled area or safety zone, as the case may be, prior to excavation or construction, and as a temporary protective measure, the Operator may require direct protective measures in accordance with good engineering and construction practices, and in accordance with the relevant Acts, to be placed across the Operator's pipeline(s) at the point of crossing, the cost of which shall be borne by the Minister.
- 12) The Minister shall be liable for and shall indemnify and save harmless the Operator from all manner of actions, causes of action, proceedings, claims, demands, costs, damages and expenses whatsoever including damage to the Operator's pipeline(s), which the Operator may sustain, pay or incur as a result of or in connection with any breach of the obligations assumed under this document by, or the negligence of, the Minister, his employees, servants or agents.
- 13) The Operator shall be liable for and shall indemnify and save harmless the Minister from all manner of actions, causes of action, proceedings, claims, demands, costs, damages and expenses whatsoever including damage to the Minister's facilities which the Minister may sustain, pay or incur as a result of or in connection with any breach of the obligations assumed under this document by, or the negligence of, the Operator or any person for whom the Operator is responsible at law or in equity.
- 14) Any written notice required or permitted hereunder shall be directed to the party to whom it will be given (hand delivered, sent by prepaid mail, or sent by telecommunication), addressed as follows:

(a) **To the Minister:**

Alberta Transportation
_____ **Region**

ATTENTION: _____ **(Name)**
Construction Manager

_____ **Region**

(b) **To the Operator:**

ATCO Pipelines,
a division of ATCO Gas and Pipelines Ltd.
7210-42 Street
Edmonton, AB T6B 3H1

ATTENTION: Land Department

And in the event of mail service disruption, such notice shall be delivered by hand.

- 15) Where the terms and conditions in this document contradict any portion of the Acts, the latter shall prevail.
- 16) The terms and conditions of this agreement shall be effective from the date shown at the beginning of this agreement.

**Executed on behalf of the
Operator by:**

**Executed on behalf of the
Minister by:**

«name»
Sr. Land Administrative Coordinator

Name
Construction Manager
_____ **Region**

June 6, 2006

Alberta Infrastructure and Transportation

2nd floor, Twin Atria Building
4999 - 98 Ave.
Edmonton, AB
T6B 2X3

Attention: Allan Kwan, P.Eng., Executive Director,
Technical Standards Branch.

Dear Mr. Kwan:

Re: Master Agreement Regarding Prime Contractor Obligations

We understand Alberta Infrastructure and Transportation (the "Department") may, from time to time, require ATCO Pipelines to perform work in or around areas in the legal possession of the Department or over which it has an ownership interest, such work as set out in a cost or project estimate issued by the Department and agreed to by ATCO Pipelines (the "Project"). We also understand the Department will require the work of other parties for the Project, one of which will be a consultant (the "Consultant") and one of which will be a road building contractor (the "Contractor").

In consideration of the mutual covenants herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the Department and ATCO Pipelines agree as follows. This letter shall be referred to as the Agreement.

I. PRIME CONTRACTOR

If ATCO Pipelines is required to perform work in relation to the Project, it shall assume the role of a prime contractor ("Prime Contractor") as defined by the *Occupational Health and Safety Act*, R.S.A. 2000, c. 0-2 (the "Act") for a delineated work site in relation to the Project (the "Work Site"). For any period of time that ATCO Pipelines has the Work Site, as defined below, at the Project for which it is Prime Contractor, it is agreed that no other entity will be Prime Contractor for that Work Site regardless of any agreement to the contrary.

Notwithstanding the above, the parties acknowledge that there may be rare circumstances wherein ATCO Pipelines, the Department, the Consultant and the Contractor agree that the creation of discrete and delineated Work Site for the performance of the Project work is either or both unsafe and impractical. Where ATCO Pipelines, the Department, the Consultant and the Contractor agree in writing that safety and other practical concerns reasonably justify it, ATCO

Pipelines shall not be a Prime Contractor and may instead agree to perform its work under the direction of another Prime Contractor. When ATCO Pipelines has entered into such an agreement to perform its work under the direction of another Prime Contractor, ATCO Pipelines shall provide to the Department a copy of that agreement prior to performing any of its work in relation to the Project.

II. THE WORK SITE

The Work Site shall be more specifically described as follows:

1. Area

The geographical area comprising the Work Site is that area within a visible boundary ("Boundary") identified and agreed by: ATCO Pipelines or a party authorized by ATCO Pipelines; the Consultant or a party authorized by the Consultant; and when the Contractor is at or near the Work Site, the Contractor or a party authorized by the Contractor (collectively, the "Parties").

When the Work Site cannot easily be circumscribed or otherwise identified by a continuous Boundary, such as fencing, at least four identifiable elements (collectively, "Elements") will be installed or identified so as to constitute a Boundary. In this case, the Work Site is defined by unmarked or imaginary straight lines connecting one Element to the next Element. The Elements used in such instance may consist of: flags, fences and other forms of signage, roadway edges, survey markings or any other marking agreed between the Parties, so as to establish a practical and reasonably identifiable Boundary. Only ATCO Pipelines or party authorized by ATCO Pipelines shall create, place, alter or remove Elements or fencing in order to establish the Boundary.

If the Parties cannot agree on the appropriate location of a Boundary of a Work Site that addresses the safety concerns of all Parties, all work at the disputed Work Site shall cease and this matter shall be referred to the Consultant. However, if the Consultant is one of the Parties involved in the dispute, or the Department has not employed a Consultant for the Project, the matter shall be referred to the Department. The Consultant or Department as applicable, after review, will decide which Party shall be responsible for resolving the issue of the appropriate location of a Boundary of a Work Site. Such decision shall be final and binding on all parties.

2. Time

The Work Site shall commence in time when the Parties jointly identify the Boundary in writing by completion of a Work Site Identification in the form attached hereto as Schedule 1 and shall end on the occurrence of the earlier of the following:

- (a) The Parties agree in writing that the Work Site has ended; and
- (b) ATCO Pipelines, upon completing the work to be done within the Work Site, moving or removing the Boundary.

III. ADDITIONAL PROVISIONS

1. Requirements for Pre-Construction Contact and Meetings

- (a) If ATCO Pipelines is able to complete its work at the Work Site before any other work begins at the location of the Project, unless otherwise agreed between ATCO Pipelines and the Department or the Consultant, ATCO Pipelines may not be required to participate in any pre-construction meetings for the Project.
- (b) If ATCO Pipelines is not able to complete its work at the Work Site before any other work begins at the location of the Project, the Department or its designate shall hold, prior to the commencement of any work at the Project, a joint meeting with a representative from each entity with whom it has contracted to work at the Project to clarify the overall safety expectations, key hazards, reporting structures and protocols for the Project. The Department or its Designate shall ensure minutes are taken at this meeting, and provided to ATCO Pipelines before work begins at the Work Site. At or prior to this meeting, ATCO Pipelines shall identify its contact persons for the Project.

2. Specific Rights and Obligations of ATCO Pipelines

- (a) ATCO Pipelines shall:
 - (i) Advise the Consultant or the Contractor when ATCO Pipelines plans to disrupt traffic and submit a traffic control plan and a written traffic accommodation strategy to address the safe accommodation of traffic for the Department's review and comment;
 - (ii) Ensure that procedures on traffic accommodation to be implemented are in accordance with the Department's typical standards as outlined in the Department's current traffic accommodation manuals (the "Procedures"); and
 - (iii) Implement Procedures if its operations interfere with normal pedestrian or vehicular traffic.
- (b) The Department acknowledges that any person seeking access to the Work Site shall obtain ATCO Pipelines' prior consent.
- (c) The Department acknowledges that ATCO Pipelines has the authority to:
 - (i) stop work within the Work Site;
 - (ii) require any person seeking access to the Work Site to:

- (A) provide evidence of a safety management system acceptable to ATCO Pipelines;
 - (B) provide a satisfactory clearance letter from the Workers' Compensation Board stating all assessments or compensation payable to the Workers' Compensation Board have been paid;
 - (C) attend any orientation or safety meetings deemed appropriate by ATCO Pipelines;
 - (D) conduct hazard assessments in compliance with the Act; and
 - (E) be subject to periodic inspection and monitoring by ATCO Pipelines;
- (iii) remove any person from the Work Site; and
 - (iv) decline Work Site access to any person.
- (d) ATCO Pipelines agrees to carry out the work in relation to the Project in any Work Site in a diligent and workmanlike fashion.

3. Specific Rights and Obligations of the Department

The Department or its designate shall provide to ATCO Pipelines the name and phone number of its safety representative and coordinator for the Project, together with the names and phone numbers of safety representatives of the other entities with whom it has contracted to perform work at the Project.

4. General Terms

- (a) This Agreement shall apply to all Projects and shall remain in force for a term of one (1) year from the date hereof. The term of this Agreement shall automatically renew for additional one (1) year terms thereafter unless a party provides written notice of termination at least four (4) months before the expiration of the then current term of the Agreement, such termination to be effective on the expiration of such current term.
- (b) This Agreement shall, with respect to any Project and notwithstanding Section 4(a) above, only terminate upon the completion of all of the work in connection with such Project or as otherwise agreed between the parties in writing.
- (c) For the purposes of this Agreement "Applicable Laws" means any statute, ordinance, regulation, policy, rule, right, directive, decree, by-law, code, standard or published policies that are enacted, made, issued or granted by any

government, regulatory agency, department, ministry, commission, certifying authority, board, court or other regulatory or rule-making entity having jurisdiction, to which the Work Site is subject.

- (d) This Agreement shall be governed by and construed in accordance with the Applicable Laws of the Province of Alberta.
- (e) Neither the Department nor ATCO Pipelines shall be entitled to assign this Agreement without the prior written consent of the other, such consent not to be unreasonably withheld.

Please acknowledge your acceptance of the above terms by signing in the space provided below and returning one copy of this Agreement to the attention of Allan at the above address.

Yours Truly,

ATCO Pipelines

Per:  _____ ALAN DIXON VP, OPERATIONS

Accepted this 8 day of JUNE, 2006

Alberta Infrastructure and Transportation

Per:  _____ June 14/06

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Schedule 1
Attached to that Master
Agreement regarding Prime Contractor Obligations
WORK SITE IDENTIFICATION

Alberta Infrastructure and Transportation Project Reference: _____

ATCO Pipelines Project Reference: _____

Project Description: _____

Authorized Representative of ATCO Pipelines: (Print Name) _____ Initials _____

Authorized Representative of Alberta Infrastructure and Transportation Consultant: (Print Name) _____ Initials _____

Authorized Representative of Principal Road Building Contractor: (Print Name) _____ Initials _____

The Work Site(s) within this Project for which ATCO Pipelines takes responsibility and the time that responsibility begins and ends are as follows. Note that ATCO Pipelines must initial each entry together with the Consultant or a party authorized by the Consultant, and the Contractor, when the Contractor is on site.

Boundaries Reference all boundary markers here	Start Date/Time	End Date/Time	Initials		
			ATCO Pipelines	Consultant	Contractor

Sketch indicating boundary areas

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