



**BC HOUSING**

**2023**

# Development Consultant Services Contract

BC Housing Development Strategies  
June 2023

[www.bchousing.org](http://www.bchousing.org)

# BC Housing Standard Development Consultant Services Agreement (2023)

between *Client* and *Development Consultant*

## Agreement

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## PART A – AGREEMENT FORM

A1 This Agreement is made on:

(Date)

A2 between the **Client**:

(Name)

(Address)

A3 **Client's Authorized Representative** (as may be changed from time to time in accordance with Section D3)

(Name)

(E-Mail)

(Fax No.)

A4 and the **Development Consultant**:

(Name)

(Address)

(E-Mail)

(Fax No.)

A5 for the following **Project**

(insert number of housing units and description of project and project name)

A6 At the following **Place of Work**:

(insert address)

A7 **Key Personnel** (as may be changed from time to time with the written consent of the **Client** in accordance with Section B5):

(Name)

(Name)

## RECITALS

### WHEREAS:

A. The *Development Consultant* has experience in the development of similar projects to the *Project* and has the ability to perform the necessary *Consultant Services* to assist the *Client* in the development of the *Project*;

B. The *Client* has requested the *Development Consultant* to assist it with the development of the *Project* and the *Development Consultant* has agreed to do so and will provide the *Consultant Services* to the *Client* in connection with the *Project* upon the terms and conditions hereinafter set forth;

C. The agility to adapt to changing circumstances is essential components of the relationship between the *Client* and the *Development Consultant*. This *Agreement* aims to provide for the necessary adjustments throughout the anticipated life cycle of the *Project* including design development and construction; and

D. The *Client* and the *Development Consultant* acknowledge that the success of the *Project* is reliant on the relationship of mutual respect, support, openness, and good faith with each other, *BC Housing* and the *Contractor* engaged to construct the *Project*.

E. If *BC Housing* is not identified as the *Client* in Section A2, *BC Housing* is providing funding or funding/financing to the *Project*.

F. In this *Agreement* and the Schedules, capitalized words and expressions have the meanings set out in SCHEDULE E - DEFINITIONS.

NOW THEREFORE in consideration of the mutual covenants hereinafter contained, the *Client* and the *Development Consultant* agree as follows:

## **PART AA - BC HOUSING RIGHTS AND INVOLVEMENT**

AA1. If *BC Housing* is not identified as the *Client* in Section A2, then, notwithstanding anything else in this *Agreement*, the *Client* and the *Development Consultant* will comply with the following:

.1 If the *Client* defaults on any of its obligations in this *Agreement*, before the *Development Consultant* may exercise any right to terminate this *Agreement*, the *Development Consultant* will provide written notice to *BC Housing* setting out the details of the *Client*'s default (a "***Client Default Notice***"). From the date of receipt of the *Client Default Notice*, *BC Housing* will have 15 calendar days to provide the *Development Consultant* with a *Step-In Notice*. The *Development Consultant* may only terminate this *Agreement* if *BC Housing*:

(a) does not provide a *Step-In Notice* within the above time period; or

(b) provides a *Step-In Notice* within the above time period but does not rectify the default within 30 calendar days from receipt of the *Client Default Notice*, provided that the *Development Consultant* and *BC Housing* may mutually agree to extend such rectification period.

.2 If *BC Housing* agrees to assume all the rights and obligations of the *Client* under this *Agreement*, the *Development Consultant*:

- (a) shall grant *BC Housing* the same rights as the *Development Consultant* has granted to the *Client* pursuant to this *Agreement* and, without limiting the generality of the foregoing, the provisions of Part I shall apply *mutatis mutandis*; and
  - (b) agrees not to make any claim or commence any proceeding against *BC Housing* for any claim the *Development Consultant* may have against the *Client* under this *Agreement*.
- .3 In consideration of the funding or financing/funding provided by *BC Housing* to the *Project* and other good and valuable consideration, the receipt and sufficiency, before performing any *Consultant Services*, the *Development Consultant* will:
  - (a) add *BC Housing* as an additional insured to any insurance policy the *Development Consultant* is required to obtain pursuant to this *Agreement*; and
  - (b) indemnify *BC Housing* to the same extent as the *Development Consultant* indemnifies the *Client* pursuant to this *Agreement*.

## **PART B - DEVELOPMENT CONSULTANT SERVICES**

- B1 The *Development Consultant* shall provide to the *Client* the following services in connection with the *Project* (the "***Consultant Services***"):
  - .1 the Basic Services, being those services identified in Stage 1 Project Administration and Coordination (All Phases) in SCHEDULE A - SERVICES MATRIX;
  - .2 those services related to the *Project* as selected (by being checked off), described and assigned to the *Development Consultant* in SCHEDULE A – SERVICES MATRIX; and
  - .3 all other services incidental to the *Consultant Services* related to the *Project* which are necessary to assist the *Client* in the co-ordination of the development, construction and completion of the *Project* on the terms and conditions and for the remuneration provided in this *Agreement*.
- B2 In performing the *Consultant Services*, the *Development Consultant* shall exercise a standard of care, skill and diligence that would normally be provided by an experienced and prudent development consultant supplying similar services for similar projects. The *Development Consultant* acknowledges and agrees that throughout the *Agreement*, the performance of the *Development Consultant's* obligations, duties and responsibilities shall be interpreted in accordance with this standard. The *Development Consultant* shall exercise the

same standard of care, skill and diligence in respect of any *Consultant*, personnel, or procedures which it may recommend to the *Client*.

- B3 The *Development Consultant* acknowledges that its standard of care includes the obligation to act with the utmost good faith towards and on behalf of the *Client* and to perform the *Consultant Services* in a good and workmanlike manner, in accordance with all applicable laws and current best practices and standards in the construction industry at the *Place of the Work*. The *Development Consultant* warrants and represents, and acknowledges that the *Client* is relying on this warranty and representation in entering into this *Agreement*, it shall perform the *Consultant Services* and cause its subcontractors and the *Consultants* to perform the *Consultant Services* in accordance with the standard of care set out in Section B2.
- B4 The *Development Consultant* represents and warrants to the *Client*, and acknowledges that the *Client* is relying on this warranty and representation in entering into this *Agreement*, that it has and will continue to have the facilities, personnel and expertise to provide the *Client* with the *Consultant Services* in accordance with the standard of care set out in Section B2.
- B5 The *Development Consultant* agrees to provide the services of the *Key Personnel* during the term of this *Agreement*. Any proposed change by the *Development Consultant* to the *Key Personnel* will be submitted to the *Client* in a written request for approval of the change. In the event that a member of the *Key Personnel* leaves the *Development Consultant* of its own initiative, the *Development Consultant* will notify the *Client* and submit its proposal for replacing such member of the *Key Personnel*. In both instances, the *Client* may approve or reject the proposal for the change in *Key Personnel*, however, approval of the change will not be unreasonably withheld. The failure of the *Development Consultant* to obtain the approval of the change will be a *Major Default* under this *Agreement*. The *Key Personnel* shall be the authorized representative(s) of the *Development Consultant* with respect to the *Project*.
- B6 The *Development Consultant* acknowledges it is an independent contractor and is not an agent, servant or employee of the *Client*. The *Development Consultant* acknowledges that it is engaged in a business independent from the *Client's* business and shall perform its obligations under this *Agreement* as an independent contractor and not as the agent or employee of the *Client*. The *Development Consultant* further acknowledges that the persons performing the *Consultant Services* are not agents or employees of the *Client*. The *Development Consultant* shall retain full control over the employment, compensation and discharge of all employees assisting in the performance of its obligations under this *Agreement*. The *Development Consultant* agrees to indemnify the *Client* for any and all payments, which the *Client* may be required to make to any government department or agency on behalf of the *Development Consultant*.

B7 The *Development Consultant* has retained, or will retain, the services of the following third party consultants ("**Consultants**") to assist it in providing the *Development Consultant Services*. Any changes to the *Consultants* will be presented to the *Client* in a written request for acceptance of the change. The *Client* may accept or reject the proposal for the change in any of the *Consultants*, however, approval of the change will not be unreasonably withheld:

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B8 The *Development Consultant* will perform the *Consultant Services* so as to enable the *Project* to be completed in accordance with the most recent plans and specifications, budget and time schedules approved in writing by the *Client*. The *Development Consultant* shall be responsible for ensuring that it has obtained, and is providing the *Consultant Services* based upon, the most recently approved plans, specifications, budget and time schedules to the *Development Consultant* and shall retain copies of all such approved plans, specifications, budget and time schedules in accordance with SCHEDULE A - SERVICES MATRIX.

B9 The *Development Consultant* will not enter into any other contract with respect to the *Project*, or approve any final plans and specifications, budget or time schedules for the *Project*, all of which will be done by the *Client*.

B10 The *Development Consultant* will monitor the progress of the work on the *Project* and in that regard will keep the *Client* informed of the development and progress of such work and will consult with the *Design Consultants*, the *Contractor* and any *Other Consultants* and keep the *Client* informed as to the *Design Consultants'* and the *Other Consultants'* advice regarding the conformance of the quality and quantity of the work to the *Client's* requirements.

B11 The *Development Consultant* will be responsible for advising the *Client* when the *Design Consultants*, the *Contractor*, and any *Other Consultants* are, in the reasonable opinion of the *Development Consultant*, failing to perform their obligations, duties and responsibilities under their respective contracts with the *Client*. The *Development Consultant* shall use reasonable efforts to ensure that the *Design Consultant*, the *Contractor* and the *Other Consultants* properly perform, and do not fail to perform, their obligations, duties and responsibilities under their respective contracts with the *Client*. Failure of the *Development Consultant* to use its reasonable efforts will be a *Major Default* this *Agreement*. Except as provided in this Section B11, the *Development Consultant* will not be responsible for the failure of the *Design Consultants* to ensure proper completion of the construction or the failure of the *Contractor* to properly complete construction of the work in accordance with plans, specifications and other contract documents approved by the *Client*.

B12 The *Development Consultant* will be responsible for advising the *Client* when the *Project* budget is affected or, in the reasonably opinion of the *Development*

*Consultant*, is likely to be affected. It is the duty of the *Development Consultant* to work on behalf of the *Client* in the best interests of the quality of the *Project* and objectives of the *Client* to advise the *Client* about budget vulnerabilities throughout the *Project* life cycle, and to seek out reduction or controls through efficiencies, innovation and good project management oversight along with the *Design Consultants*, the *Contractor* and any *Other Consultants*.

B13 The *Development Consultant* shall obtain and pay for the following insurance requirements:

.1 Commercial General Liability Insurance in an amount not less than \$2,000,000.00 inclusive per occurrence against bodily injury, personal injury and property damage and including liability assumed under this *Agreement* and arising out of the operations of the *Development Consultant*, its *Consultants* and sub-consultants and their respective servants, agents, or employees under this *Agreement*;

.2 Professional Errors and Omissions Liability Insurance protecting the *Development Consultant*, its *Consultants* and sub-consultants and their respective servants, agents, or employees against losses, claims, damages, actions, and causes of action that the *Client* may sustain, incur, suffer or be put to at any time either before or after the expiration or termination of this *Agreement*, that arise out of errors, omissions or negligent acts of the *Development Consultant*, or its *Consultants*, sub-consultants, servants, agents, or employees under this *Agreement*. Such insurance shall be in an amount usual for an agreement of this nature but for no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate;

.3 The Professional Errors and Omissions Liability insurance shall be maintained continuously from the commencement of the *Development Consultant Services* until 72 months after substantial completion of the *Project*. The insurance policy shall include a requirement that no cancellation of the insurance shall be made except with at least 30 business days written notice from the insurer to the *Client* and *BC Housing*. The *Development Consultant* shall advise the *Client* and *BC Housing* in writing of any cancellation or reduction in the level of insurance coverage.

.4 The *Development Consultant* must:

(a) within 10 business days of commencement of the *Development Consultant Services*, provide the *Client* and *BC Housing* with evidence of all required insurance in a form acceptable to the *Client* and *BC Housing*;

(b) within 10 business days of the expiration of any insurance policy during the term of this *Agreement*, provide the *Client* and *BC Housing* with evidence of new or renewal policy, showing no break in coverage, in a form acceptable to the *Client* and *BC Housing*; and



(c) upon request by the *Client* or *BC Housing* at any time, provide to the *Client* and *BC Housing* certified copies of the required insurance policies.

.5 The *Development Consultant* shall provide, maintain, and pay for any additional insurance which it is required by law to carry, or which it considers necessary to cover risks not otherwise covered by insurance specified in this schedule in its sole discretion.

B14 The *Development Consultant* will disclose to the *Client* and *BC Housing* any real, potential or perceived interest that it has or may have or that its directors, officers, shareholders, agents, authorized representatives or employees now have or may have in any aspect of the *Project* at the time of execution of this Agreement or at any time during the term of this Agreement.

B15 The *Development Consultant* will abide by the *Guidelines* and will be responsible for ensuring that its directors, officers, shareholders, agents, authorized representatives and employees and those of its Consultants abide by the *Guidelines*. The *Development Consultant* will provide a copy of the *Guidelines* to, and obtain a written acknowledgement from, each of its directors, officers, shareholders, agents, authorized representatives and employees and those of its Consultants, that they have read and understand and agree to comply with the *Guidelines*. The *Development Consultant* will be responsible for a breach of the *Guidelines* by its directors, officers, shareholders, agents, authorized representatives and employees and those of its Consultants and such breach will be a *Major Default* under this Agreement.

B16 In the event a conflict of interest as described in the *Guidelines* arises during the term of this Agreement:

.1 The *Development Consultant* will immediately provide to the *Client* and to *BC Housing*:

- (a) a statutory declaration pursuant to, and in the form attached to, the *Guidelines*; and
- (b) a written request for consent of the *Client* and *BC Housing* for the *Development Consultant* to proceed with the transaction giving rise to the conflict of interest and all relevant details of the conflict of interest (which written request and details shall be attached to and form part of the statutory declaration).

.2 Subject to subsection .3 below, the *Development Consultant* will not proceed with any transaction giving rise to the conflict of interest and will not accept any fees, disbursements, bonuses, payments or other compensation in relation to the *Project* from any source in addition to the

fees and disbursements payable by the *Client* pursuant to this *Agreement*, except with the express written consent of *Client* and *BC Housing*;

- .3 The *Development Consultant* may accept fees, disbursements, bonuses, payments or other compensation in relation to the *Project* in addition to the fees and disbursements payable by the *Client* pursuant to this *Agreement* only if such fees, disbursements, bonuses, payments or other compensation are:
- (a) from Canadian Mortgage and Housing Corporation (CMHC), the Columbian Basin Trust (CBT), or some other publicly funded source provided such arrangement was place prior to this *Agreement* being entered into;
  - (b) from a local government in situations where the costs of a publicly funded facility comprising part of the *Project* are shared with a local government; or
  - (c) approved in writing by the *Client* and *BC Housing*.

B17 The *Development Consultant* will promptly provide to the *Client* and *BC Housing* a statutory declaration in a form acceptable to the *Client* and *BC Housing* in accordance with the *Guidelines* upon the request, at any time, of either the *Client* or *BC Housing*.

B18 The *Development Consultant* shall, as soon as reasonably possible, notify the *Client*, *BC Housing* and any other entity the *Development Consultant* knows is involved in the *Project* with the *Client*, if the *Development Consultant* becomes aware of any information technology related threat that has been or may be transmitted electronically to the *Client*, *BC Housing* or any such other entities. Information technology related threats include but are not limited to: viruses, rogue security software, trojan horses, *spyware*, computer worms, phishing, rootkits and any real or perceived electronic attack (the "**IT Threat**"). If the *Client* or *BC Housing* becomes aware of an *IT Threat*, the *Development Consultant* acknowledges that the *Client* or *BC Housing* may, at its sole discretion, notify any organization that it reasonably believes could be exposed to the same *IT Threat* and include in such notification any relevant details for the purpose of avoiding or minimizing any negative impact.

## PART C - FEES

C1 Subject to the early termination provisions of this *Agreement* and the right of the *Client* to withhold payment pursuant to Section F8, the fee payable to the *Development Consultant* for providing the *Consultant Services* set out in SCHEDULE A - SERVICES MATRIX, excluding any value added taxes, shall be calculated in accordance with SCHEDULE B - DEVELOPMENT CONSULTANT SERVICES FEE AND RATES and shall be a fixed fee in the following amount (the "**Fee**"):

\$ \_\_\_\_\_

C2 The *Fee* shall be apportioned to the relevant phase or section (each a "**Phase**") of the *Consultant Services* as follows:

.1 Project Administration & Coordination – all phases	\$_____	_____ %
.2 Pre-design / Pre-development phase	\$_____	_____ %
.3 Schematic design phase	\$_____	_____ %
.4 Design Development phase	\$_____	_____ %
.5 Working Drawings phase	\$_____	_____ %
.6 Construction phase	\$_____	_____ %
.7 Post Construction phase	\$_____	_____ %
Total [the total shall equal the fixed fee set out in C1]	\$_____	_____ %

C3 The *Development Consultant* shall be entitled to be reimbursed for *Reimbursable Expenses*.

#### PART D – CLIENT SERVICES

D1 The *Client* will provide the services related to the *Project* as selected (by being checked off), described and assigned to the *Client* in SCHEDULE A –SERVICES MATRIX (the "**Client Services**").

D2 The *Client* has retained, or intends to retain, the services of the following third party consultants ("**Other Consultants**") to assist it in providing the *Others Services* as selected (by being checked off), described and assigned to *Others* in SCHEDULE A –SERVICES MATRIX:


D3 The *Client* has or will authorize the person(s) identified in Section A3 to act as its representative with respect to the *Project*. Such person(s) may be changed from time to time by the *Client*. The *Client* will provide notice of any such change to the *Development Consultant*.

D4 The *Client* will use its reasonable efforts to keep the *Development Consultant* apprised of major decisions it makes in connection with the *Project*, in so far as such decisions are pertinent to the *Consultant Services* to be provided by the *Development Consultant*.

D5 The *Client* will provide to the *Development Consultant* copies of records showing monies received and disbursements made by the *Client* in connection with the *Project*.

## **PART E - RECORDS AND AUDIT**

- E1 The *Development Consultant* will keep and maintain full and detailed records for six years after expiry of any applicable warranty period all records, reports and other documentation required under this *Agreement*. During this period, the *Client* and the *Client's* representatives may on request, and acting reasonably, require copies of, inspect and audit all books, invoices and records of the *Development Consultant* that relate to any *Changes Order*, *Change Requests*, delay, claims or disputes by the *Development Consultant*, including but not limited to quotations and invoices by *Consultants*, *Other Consultants* or suppliers to the *Project*. The *Client* may be assisted by a third party audit firm of the *Client's* choice. In conducting the audit, the *Client* will have all powers necessarily incidental to conducting an audit, including the right to have reasonable access to the *Development Consultant*, its offices and its personnel and to inspect and take copies of any record.
- E2 If the *Client* provides notice to the *Development Consultant* that the *Client* is conducting an audit, the *Development Consultant* will promptly provide all other information reasonably requested by the *Client* or its audit firm. The *Development Consultant* will cooperate with the *Client* and its audit firm in the conduct of any audit and the parties will promptly review and settle all matters arising from such audit, including the refunding or payment of monies to the other, if applicable.
- E3 The *Development Consultant* must ensure that all direct and indirect contracts with *Consultants* include an agreement to be bound by the terms of this Part E and to provide access to the *Client* and its third party audit firm to perform an audit in accordance with this Part E. The *Development Consultant* acknowledges that both the *Client* and its third party audit firm may request information to support an audit directly from any of *Consultants* and the *Development Consultant* will not prevent or influence its *Consultants* from supplying the information.
- E4 Notwithstanding the above, subject to applicable law, the right to review, inspect audit or copy will not extend to financial statements of the *Development Consultant* or *Consultants* or the composition of the Fee and the Rates except to the extent the *Client* requires such information to validate the costs make-up of a *Change Order*.

## **PART F – PAYMENT OF FEES, REIMBURSABLE EXPENSES, INVOICING, ADDITIONAL SERVICES, CHANGE REQUESTS AND CHANGE ORDERS**

- F1 The *Client* will pay the *Fee* and *Reimbursable Expenses* to the *Development Consultant* for the *Consultant Services* agreed to be provided herein on the terms and conditions set forth in this *Agreement*.

- F2 The *Development Consultant* will carry out the *Consultant Services* and submit invoices for the *Consultant Services* only in accordance with the chronology of the Phases as set forth in Section C2, except with the prior written consent of the *Client*. The *Development Consultant* shall not carry out *Consultant Services* or submit any invoices in connection with a particular Phase until such time as the prior Phases listed in Section C2 have been completed or are underway and it is customary in similar projects for such particular Phase to commence. For clarity and by way of example, the *Development Consultant* shall not carry out *Consultant Services* or submit any invoices in connection with the Working Drawings Phase until such time as the prior Phases listed in Section C2 subsections .2 to .4 have been completed or are underway and it is customary in similar projects for the Working Drawings Phase to commence.
- F3 The *Development Consultant* shall invoice the *Client* for *Consultant Services* performed, and *Reimbursable Expenses* incurred, based on, as applicable, the following:
- .1 The apportionment of the *Fee* for each *Phase* of the *Consultant Services* as stated in Section C2 of this *Agreement* and in the proportion to progress made within each *Phase* of the *Services*;
  - .2 *Reimbursable Expenses* incurred to date; and
  - .3 any applicable value added taxes.
- F4 The *Development Consultant* shall issue the invoice referred to in Section F3 on a monthly basis, unless the *Client* and the *Development Consultant* otherwise agree.
- F5 The invoices will be accompanied by a report containing the following items and such other information as reasonably requested from time to time by the *Client*:
- .1 a description identifying which of the *Consultant Services* have been delivered and the status of the *Phases* in sufficient detail for the *Client* to understand the *Consultant Services* provided, the main tasks that have been undertaken, and the stage of the *Project* to enable payment to be made. Reimbursable expenses should be itemized with receipts;
  - .2 a progress billing report detailing the following items:
    - (a) the amount of the *Fee* and the amount of the *Reimbursable Expenses* invoiced for the current billing period;
    - (b) the aggregate amount of the *Fee* and the amount of the *Reimbursable Expenses* invoiced to date;
    - (c) the aggregate amount of the *Fee* invoiced to date as a percentage of the total *Fee*; and

- (d) the total amount of the *Fee* remaining under the *Agreement*;
  - .3 an itemized list of *Reimbursable Expenses* and copies of receipts therefor;
  - .4 copies of detailed invoices or receipts for *Consultants* that may be engaged for the *Project* by the *Development Consultant*; and
  - .5 confirmation in writing that all previous invoices for *Consultants* that may be engaged for the *Project* by the *Development Consultant* have been paid or if not yet paid, a detailed explanation as to the reason not yet paid.
- F6 Any expenditure not included in paragraph 3 of SCHEDULE C – REIMBURSABLE EXPENSES which the *Development Consultant* wishes to invoice as a *Reimbursable Expense* shall be approved by the *Client* in writing as a *Reimbursable Expense* prior to such expenditure being incurred.
- F7 Subject to the provisions of Section F8, payment of an invoice by the *Client* is due within 30 days of receipt by the *Client* of an invoice containing the information required by Section F5 in form and substance satisfactory to the *Client*.
- F8 Except as set forth in subsection .3 of this Section F8, no deduction will be made from the monies payable to the *Development Consultant* hereunder because of:
- .1 refunds or rebates granted to the *Client*;
  - .2 a reduction in the budget for the *Project*; or
  - .3 liquidated damages or other sums withheld from contractors or other persons engaged on the work unless such damages or other sums are the result of acts improperly carried out, omissions or delays in carrying out acts or the negligent advice by the *Development Consultant*; In the event the *Client* incurs or, in the opinion of the *Client* acting reasonably, is likely to incur, damages or other sums as a result of acts improperly carried out, omissions or delays in carrying out acts or the negligent advice by the *Development Consultant*, the *Client* may withhold payment to the *Development Consultant* in the amount of such damages or other sums and pay such damages or other sums from the amount withheld.
- F9 Upon recognizing there may be a need for the *Development Consultant* to perform additional services over and above the Consultant Services, either the *Development Consultant* or the *Client* may promptly provide a written request ("**Change Request**") to the other party for *Additional Services* to be performed by the *Development Consultant* (the "**Requested Changes**"), which *Change Request* shall include:

- .1 if, and how, the said *Requested Changes* will affect the cost of the *Project*;
  - .2 if the *Change Request* is from the *Development Consultant*, upon the request of the *Client*, the *Change Request* shall include an itemized breakdown of the costs and the implication of the *Requested Changes*; and
  - .3 whether or not the *Project* budget has sufficient funds for such additional costs.
- F10 In order to proceed with any such *Change Request*, a change order must be prepared by the *Development Consultant* and approved in writing by the *Client* and the *Development Consultant* (a “**Change Order**”), which *Change Order* will include the following:
- .1 the parties' agreement as to the effect of the *Requested Changes* on:
    - (a) the cost of the *Project*;
    - (b) the construction schedule;
    - (c) the *Project* generally; and
    - (d) an acknowledgement that there are sufficient *Project* funds available to cover the cost of the said *Requested Changes* and fees to the *Development Consultant*.
- F11 The *Development Consultant* shall only perform *Additional Services* or earn additional fees pursuant to a *Change Order* approved in writing by both the *Client* and the *Development Consultant*.
- F12 The *Development Consultant* shall use the Rates to price *Additional Services*.

## **PART G – TERMINATION**

- G1 The *Client* may terminate this *Agreement* at any time by giving not less than 30 days' notice in writing to the *Development Consultant*.
- G2 The *Client* may terminate this *Agreement* if the *Development Consultant* commits a Major Default or either the *Client* or the *Development Consultant* may terminate this *Agreement* at any time if the other party breaches a material term of this *Agreement* or fails to properly perform its obligations pursuant to this *Agreement*. No such termination will take place unless the party terminating has given the other party five business days' written notice of such default and such default has not been rectified within such five day period or as otherwise agreed by the parties.

G3 In the event this *Agreement* is terminated pursuant to Section G1 or Section G2, in each instance:

- .1 the *Client* shall have the right to withhold payment pursuant to subsection .3 of Section F8;
- .2 the *Development Consultant* will be entitled to be paid for *Consultant Services* rendered and *Reimbursable Expenses* incurred to the date of termination;
- .3 payment for *Consultant Services* rendered and *Reimbursable Expenses* incurred shall be made within 30 days of receipt by the *Client* of an invoice in compliance with Section F5 of this *Agreement*;
- .4 if the *Development Consultant* has rendered *Consultant Services* in advance of the applicable *Phase* in contravention of Section F2, the *Development Consultant* shall not be entitled to be paid for any such *Consultant Services* or *Reimbursable Expenses* incurred in connection therewith; and
- .5 the *Development Consultant* hereby agrees to waive receipt of the balance of the Fee and the *Development Consultant* shall not be entitled to any compensation for loss of profit or additional profit, loss of revenue or loss of business opportunities.

G4 Unless otherwise stated in this *Agreement*, this *Agreement* shall expire upon the later of:

- .1 one year after the date of *Substantial Performance* of the work for the *Project*;
- .2 certification of *Total Performance* of the work for the *Project*; or
- .3 three months after the expiry of the one year warranty contained in the construction contract for the *Project*.

## **PART H – DISPUTE RESOLUTION**

H1 Differences between the *Development Consultant* and the *Client* as to the interpretation, application or administration of this *Agreement*, or any failure to agree where agreement between the *Development Consultant* and the *Client* is called for, broadly described as disputes, will be remedied in accordance with this Part H of the *Agreement*.

H2 The *Development Consultant* and the *Client* shall make all reasonable efforts to resolve disputes by amicable negotiations and shall provide, on a without



prejudice basis, frank, candid and timely disclosure of relevant facts, information and documents, to facilitate these negotiations.

- H3 If a dispute is not resolved by negotiation within 15 days of commencing negotiation, the *Development Consultant* and the *Client* will submit the dispute to the Presidents or Chief Executive Officers of each of the *Development Consultants* or the *Client* or their single respective designees.
- H4 If the dispute is not resolved by agreement of the Presidents or Chief Executive Officers or their respective designees within 15 days following the submission of the matter to them, the *Client* and the *Development Consultant* will submit the matter to a mediator whose expenses will be shared equally by the *Client* and the *Development Consultant* and who is acceptable to both parties or, if they cannot agree, a mediator appointed by the [British Columbia International Arbitration Centre](#).
- H5 If mediation pursuant to Section H4 does not result in a resolution of the dispute within 15 days of the commencement of mediation, the parties will submit the dispute within 15 days of the failure of the mediation to arbitration by a single arbitrator whose expenses will be shared equally by the *Client* and the *Development Consultant* and who is acceptable to both parties or, if they cannot agree, an arbitrator appointed by the [British Columbia International Arbitration Centre](#). The determination of the arbitrator will be conclusive and binding on the parties. The [Arbitration Act](#) of British Columbia or successor legislation will apply to the arbitration.

## **PART I – RIGHTS, REMEDIES & INDEMNITY**

- I1 The duties and obligations imposed by this *Agreement* and the rights and remedies available hereunder are in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.
- I2 The representations and warranties of the *Development Consultant* in or under this *Agreement* shall survive the termination or expiry of this *Agreement* and shall continue in full force and effect for a period of two years from the termination or expiry date.
- I3 Notwithstanding the provision of any insurance coverage by the *Client*, the *Development Consultant* hereby agrees to indemnify and save harmless the *Client*, the *Client's* successors and representatives of each of them from and against losses, claims, damages, actions, and causes of action (collectively referred to as “**Claims**”) that the *Client* may sustain, incur, suffer or be put to at any time either before or after the expiration or termination of this *Agreement*, that arise out of errors, omissions or negligent acts of the *Development Consultant* or the *Consultants*, sub-consultants, servants, agents or employees under this *Agreement*, excepting always that this indemnity does not apply to the extent, if any, to which the Claims are caused by errors, omissions or the

negligent acts of the *Client*, the *Other Consultants*, assigns and authorized representatives or any other persons.

- I4 Subject to Section I5, any and all claims, whether in contract or tort, which the *Client* has or may have against the *Development Consultant* in any way arising out of, or related to, the *Development's Consultant's* duties and responsibilities, including those arising from Section I2, shall be limited in amount to the greater of:
- .1 the applicable insurance limits that the *Development Consultant* is required to have under Section B13 of this *Agreement*; and
  - .2 the actual amount of insurance coverage that the *Development Consultant* has in place for this *Project*.
- I5 Section I4 will not limit the *Development Consultant's* liability in connection with:
- .1 infringement of the intellectual property rights of a third party; or
  - .2 gross negligence or malfeasance.

## **PART J - CONFIDENTIAL INFORMATION AND PRIVACY OBLIGATIONS**

- J1 The *Recipient* will not use any *Confidential Information* for any purpose outside the scope of this *Agreement* or disclose any *Confidential Information* to any person or entity, except with the *Discloser's* prior written consent.
- J2 The obligation of nondisclosure in Section J1 will not apply to any *Confidential Information* that the *Recipient* is required to disclose by applicable law, provided that the *Recipient* provides the *Discloser* with prompt written notice of the requirement to disclose, reasonable assistance in opposing or limiting such disclosure, and limits disclosure to the *Confidential Information* that is strictly required by the applicable court, government agency or legal process. The *Recipient* may disclose *Confidential Information* to those of its employees, subcontractors and other representatives who have a need to know such Confidential Information in connection with the *Recipient's* performance of the *Consultant Services* or the *Client Services*, as the case may be, provided that the employee, subcontractor or other representative has entered into a written confidentiality agreement with the *Recipient* that contains provisions that are at least as protective of the *Confidential Information* as the provisions of this *Agreement*. The *Recipient* will be responsible for any breach of Section J1 by its employees, subcontractors and other representatives.
- J3 The *Recipient* agrees that any unauthorized disclosure of *Confidential Information* may cause immediate and irreparable injury to the *Discloser* and that, in the event of such breach, the *Discloser* will be entitled, in addition to any other available remedies, to immediate injunctive and other equitable relief.

- J4 The *Client* acknowledges that all *Personal Information* is *Confidential Information* to which the provisions of Section J1 and Section J2 apply, except to the extent such provisions are inconsistent with this Section J4, which prevails with respect to *Personal Information*. In addition to the obligations set out in Section J1 and notwithstanding the disclosure rights set out in Section J2, the *Development Consultant* will, during the performance of the *Consultant Services*:
- .1 not use *Personal Information* for any purposes other than as specifically contemplated under this Agreement;
  - .2 receive, collect, use, store, access, process, record, disclose, transfer, retain, dispose of, destroy, manage or otherwise handle all *Personal Information* in accordance with all applicable laws relating to the collection, storage, use and disclosure of Personal Information, as amended from time-to-time, including the *Freedom of Information and Protection of Privacy Act* of British Columbia, the regulations thereunder, and any similar statutes and laws in any other jurisdictions (collectively, "***Privacy Law***");
  - .3 perform its obligations under this Section J4 in a manner that will enable the *Client* to comply with *Privacy Law*;
  - .4 if the *Development Consultant* has knowledge of any unauthorized disclosure of or access to *Personal Information* of any of the customers or clients of the *Client*, the *Development Consultant* will:
    - (a) immediately report such unauthorized disclosure or access to the *Client* and *BC Housing*;
    - (b) cooperate with the *Client* and *BC Housing* in providing any notices regarding impermissible disclosures caused by such disclosure or access which the *Client* or and *BC Housing* deems appropriate; and
    - (c) not make any public statements about the unauthorized disclosure or access (even if such disclosure or access affects other customers of the *Development Consultant*) without the prior written consent of the *Client* and *BC Housing*.

## PART K – MISCELLANEOUS GENERAL PROVISIONS

K1 In the event of any conflict, inconsistency, ambiguity or difference between:

- .1 the terms of the main body of this *Agreement* and the terms of any Schedule to this *Agreement* or *Change Order*, other than to the extent that the *Change Order* modifies the *Consultant Services* to be rendered and the *Fee* payable, the terms of the main body of this *Agreement* will govern and be paramount and any such provision in the Schedule or *Change Order* will be deemed to be amended to the extent necessary to eliminate any such conflict, inconsistency, ambiguity or difference. Notwithstanding the foregoing, if there is any right or remedy of the *Client* set out in this *Agreement* or any part hereof which is not set out or provided for in a Schedule or *Change Order*, such additional right or remedy will not constitute a conflict or inconsistency and the *Client* will be entitled to exercise such rights and enforce such remedies;
- .2 the terms of any *Change Order* and the terms of any Schedule to this *Agreement*, the terms of any *Change Order* to the extent it modifies the *Consultant Services* to be rendered and the *Fee* payable, will govern and be paramount; in all other events, the terms of the Schedules to this *Agreement* will govern and be paramount.
- .3 the terms of various *Change Orders*, the most current *Change Order* will govern and prevail, superseding older *Change Orders*;
- .4 the terms of various Schedules to this *Agreement*, the *Client*, acting reasonably, shall determine the order of precedence.

K2 Neither the expiration nor the earlier termination of this *Agreement* will release either of the parties from any obligation or liability that accrued prior to the expiration or termination. The provisions of this *Agreement* requiring performance or fulfilment after the expiration or earlier termination of this *Agreement*, such other provisions as are necessary for the interpretation thereof, and any other provisions hereof, the nature and intent of which is to survive termination or expiration of this *Agreement*, will survive the expiration or earlier termination of this *Agreement*.

- K3 Any notice required to be given pursuant to this *Agreement* will be addressed in writing to the respective *Client* or *Development Consultant* at the addresses stated in Section A2 and Section A4 or such other address as may have been subsequently provided to the other party in writing and any notice so given will be deemed to have been received on the third day following mailing in a postage-paid cover mailed in a post office in Canada or if delivered by hand or by telecopier will be deemed to have been received on the day of delivery or telecopying if it is a business day and otherwise on the next succeeding business day.
- K4 This *Agreement* will enure to the benefit of and be binding upon the parties hereto, their executors, administrators, representatives, successors and permitted assigns.
- K5 Neither the *Client* nor the *Development Consultant* will assign this *Agreement* without the prior written consent of the other, except that this *Agreement* or any of the rights and obligations hereunder may be assigned to *BC Housing* without the consent of the other party. In such case, the party assigning its rights and obligations to *BC Housing* shall provide notice of such assignment to the other party.
- K6 Time will be of the essence of this *Agreement*.
- K7 This *Agreement* will be governed by and construed and enforced in accordance with the laws of British Columbia.
- K8 The division of this *Agreement* into sections and the insertion of headings are for convenience of reference only and are not intended to govern, limit or aid in the construction of any provision. In all cases, the language in this *Agreement* will be construed simply, according to its fair meaning, and not strictly for or against any party.
- K9 The word "**including**", when following any general statement, term or matter, is not to be construed to limit such general statement, term or matter to the specific items or matters set out immediately following such word or to similar items or matters whether or not non-limiting language such as "**without limitation**" or "**but not limited to**" or words of similar import is used with reference thereto, but rather such general statement, term or matter is to be construed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter.
- K10 If any provision contained in this *Agreement* is for any reason held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provisions of this *Agreement* which will be construed as if such invalid, illegal or unenforceable provision had never been contained therein and such other provisions will be enforceable to the fullest extent permitted by law.

K11 No consent or waiver expressed or implied, by a party of any default by the other party in observing or performing its obligations under this *Agreement* will be deemed or construed to be a consent or waiver of any other default. Failure on the part of a party to complain of any act or failure to act by the other party or to declare the other party in default, irrespective of how long such failure continues, will not constitute a waiver by such party of its rights under this *Agreement* or at law or at equity.

## SIGNATURES

IN WITNESS WHEREOF the duly authorized signatories of the parties hereto have executed this *Agreement* as of the day and year first above written.

### *Client*

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(Name of Client)

---

(Signature)

---

(PRINT – Name and title of person signing)

### *Development Consultant*

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(Name of Development Consultant)

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(Signature)

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(PRINT – Name and title of person signing)

## SCHEDULE A - Services Matrix

### Instructions:

Parties to the Development Consultant Services Agreement, using this Schedule A - Services Matrix as a scope guide are to indicate via a check mark (●) in the applicable box for the services to be provided by the *Development Consultant*, by *Others*, by the *Client*, or indicate that that service is not applicable.

### **Consultants engaged by the Development Consultant for the Project**

In the event that *Consultants Services* are completed by a *Consultant* (i.e.: a sub-consultant) engaged by the *Development Consultant* for the *Project*, the service should be indicated as the responsibility of the *Development Consultant*, and a check mark (●) should be entered into the corresponding box under the "Development Consultant Services" column.

### **Consultant engaged by the Client for the Project**

In the event that services are completed by a consultant engaged by the *Client* for the *Project*, the service should be indicated as the responsibility of *Others*, and a check mark (●) should be entered into the corresponding box under the "Provided by Others" column.

### **Notes:**

This Services Matrix as part of the BC Housing Development Consultant Services Contract is not intended to be used to engage for professional design services, nor is it meant to replace any form of contract that exists under a professional standard that governs professional design/engineering services. The matrix is specifically for the purposes of defining a Development Consultant's scope of work. The purpose of assigning scopes to team members by 'ticking' the column is to ensure that redundancy is kept to a minimum and that value is expressed through the resultant fees. For tasks or services not covered in this Schedule A – Services Matrix, please see Part F of the Agreement.

The Services Identified to be provided by the Development Consultant in this Schedule A - Services Matrix are in addition to any Consultant Services to be provided by the Development Consultant in the main body of the Development Consultant Services Agreement.



## **SCHEDULE B – Consultant Services Fee and Rates**

## **SCHEDULE C – Reimbursable Expenses**

Note: Refer to BC Housing Supply Chain Management document – P-GFP-2017 Reimbursable Expenses.

## **SCHEDULE D - Conflict of Interest Guidelines for Development Consultants**

## SCHEDULE E - Definitions

In the *Agreement*, the following words and phrases have the meanings indicated:

- a) "**Additional Services**" means the additional services that may be provided by the *Development Consultant* to the *Client* pursuant to a *Change Order*;
- b) "**BC Housing**" means *British Columbia Housing Management Commission*;
- c) "**Change Order**" has the meaning ascribed to it in Section F11;
- d) "**Change Request**" has the meaning ascribed to it in Section F10;
- e) "**Claims**" has the meaning ascribed to it in Section I3;
- f) "**Client**" means party listed under Section A2;
- g) "**Client Default Notice**" has the meaning set out in Section AA1 .1;
- h) "**Client Services**" means the services to be provided by the *Client* as set forth in Section D1;
- (h) "**Confidential Information**" means all information that **Discloser** discloses or makes available to the *Recipient*, whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. The existence and the terms and conditions of this *Agreement*, (including the Fee and other terms set forth in all *Change Orders*) are *Confidential Information*;
- i) "**Construction Consultants**" means the third party construction consultant engaged by the *Client* to provide advice with respect to the construction of the *Project*;
- j) "**Consultant Services**" means the services to be provided by the Development Consultant to the Client as set forth in Section B1;
- k) "**Consultants**" means the third party consultants retained by the *Development Consultant* as listed in Section B7;
- l) "**Contractor**" means the third party contractor engaged by the *Client* to construct the *Project*;
- m) "**Design Consultant**" means the third party design consultant engaged by the *Client* to provide design plans for the *Project*;
- n) "**Development Consultant**" means the party listed under Section A4;

- o) "**Discloser**" means a party that discloses or otherwise makes available *Confidential Information*;
- p) "**Fee**" means the fee payable to the *Development Consultant* as set out in Section C1;
- q) "**Guidelines**" means the *Conflict of Interest Guidelines for Development Consultants* set out in SCHEDULE E;
- r) "**IT Threat**" has the meaning ascribed to it in Section B18;
- s) "**Key Personnel**" means the person(s) listed under Section A7;
- t) "**Major Default**" means a breach by the *Development Consultant* of its obligations under the *Agreement* such that it is considered to be a breach of a material term of this *Agreement* giving rise to the remedies of the *Client* under Section G2. It being understood and agreed that the breaches identified in the *Agreement* as a *Major Default* are not meant to be the only breaches that are a breach of a material term of the *Agreement*;
- u) "**Other Consultants**" means the third party contractors, including the *Design Consultant*, the *Construction Consultant* and the *Contractor*, engaged by the *Client* to provide services in connection with the *Project*;
- v) "**Others**" has the meaning ascribed to it in SCHEDULE A - SERVICES MATRIX;
- w) "**Others Services**" has the meaning ascribed to it in SCHEDULE A - SERVICES MATRIX;
- x) "**Personal Information**" means any information about an identifiable individual, including such individuals' name, address, email address, phone number, age, gender, credit card numbers and financial information, that is collected by or accessible to the *Development Consultant* in the course of performing its obligations under the *Agreement*, including any such information relating to the *Client's* employees and members of the public that the *Client* serves;
- y) "**Phase**" means the relevant phase or section of the *Consultant Services* as set out in Section C2;
- z) "**Place of Work**" means the located described under Section A5;
- aa) "**Privacy Law**" has the meaning ascribed to it in Section J4;
- bb) "**Project**" means the project described under Section A4;
- cc) "**Rates**" means the rates set out in SCHEDULE B -CONSULTANT SERVICES FEE AND RATES;

- dd) "**Recipient**" means a party receiving *Confidential Information*;
- ee) "**Reimbursable Expenses**" means those eligible expenses incurred by the *Development Consultant* in connection with the *Project* that fall within those items listed in paragraph 3 of SCHEDULE C - REIMBURSABLE EXPENSES and are approved by the *Client* acting reasonably;
- ff) "**Release Date**" has the meaning ascribed to it in Section F9;
- gg) "**Requested Changes**" has the meaning ascribed to it in Section F10;
- hh) "**Step-In Notice**" means a written notice from *BC Housing* to the *Development Consultant* stating that *BC Housing* agrees to assume all the rights and obligations of the *Client* under the *Agreement*, including any liabilities for outstanding payment, and to otherwise take over the *Agreement* from the *Client*;
- ii) "**Substantial Performance**" has the meaning ascribed to it in the construction contract for the *Project*; with the *Contractor*;
- jj) "**Total Performance**" has the meaning ascribed to it in the construction contract for the *Project*; with the *Contractor*;